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THE
TRYAL^{c7}

OF

Charles Lord Mohun,

BEFORE

The House of PEERS in Parliament,

For the Murder of *William Mountford*;

Which began the 31 of *January* 1692. And continued by several Adjournments till the Fourth of *February* following;

The Most Honourable the Lord Marquis of *Carmarthen*,
Lord President of Their Majesties Council,

Being LORD HIGH STEWARD *pro hac vice*.

TOGETHER WITH

The Questions in Points of Law,
Put by Their LORDSHIPS to the JUDGES;

o

WITH

The Arguments of my Lord *Mohun's* Counsel,
And the Opinions of the Judges upon the said Questions.

Published by Command of the House of PEERS.

Printed by *Edward Jones* in the *Savoy*;
And Published by him and *Randal Taylor* near *Stationers-Hall*. MDCXCIII

THE TRIAL

OF

Charles John Smith

BEFORE

The House of Commons

For the Murder of William Smith

Which began the 1st of January 1790. And continued till the 1st of May 1790.

The Most Honourable the Lord Advocate of Scotland
Lord Advocate of the High Court of Justiciary

Recd. May 10, 1790.

Being LORD HIGH JUSTICE OF GREAT BRITAIN

TOGETHER WITH

The Questions in Point of Law

Put by Their LORDSHIPS the Judges

WITH

The Arguments of the Lord Advocate General

And the Opinions of the Judges upon the said Questions.

Printed by Command of the House of Commons.

Printed by Edward Jones in the Strand.

And bound by him and Richard Taylor near Chancery.

LAM MDCCXCII

T H E T R Y A L O F Charles Lord Mohun.

Die Martis 31. Januarii, 1692.

IN the Court Erected in *Westminster Hall*, for the Tryal of the Lord *Mohun*, for the Murder of *William Mountford*.

About 12 a Clock this Day, the Lords came from their own House in their Robes, in Procession in this manner into the Court.

First, The Lord High Stewards Gentlemen Attendants, two and two.

Then the Clerks of the House of Lords, with the two Clerks of the Crown in the *Kings Bench* and *Chancery*, two and two.

Then the Masters in Chancery, two and two.

Then the Judges, Eight of them, two and two.

Then the Peers Eldest Sons, and Peers Minors, two and two.

Then four Serjeants at Arms with their Maces, two and two.

Then the Yeoman Usher of the House,

Then the Peers according to their Seniority, beginning with the youngest Baron, two and two.

Then 4. Serjeants at Arms with their Maces, two and two.

Then *Garter* King at Arms, and the Gentleman Usher of the Black Rod: *Garter* on the Right Hand, and Black-Rod on the Left, carrying the white Staff before the Lord High Steward.

Then his Grace the Lord Marquess of *Carmarthen*, Lord High Steward of *England* alone.

When the Lords were Seated on their proper Benches, and the Lord High Steward upon the Wooll-Pack, the two Clerks of the Crown standing before the Clerks Table, and the Clerk of the Crown in Chancery, having their Majesties Commission to his Grace the Lord High Steward in his Hand, they both made three Reverences to his Grace, and at the third coming up before the Wooll-Pack, they did both kneel down, and the Clerk, of the Crown in the Chancery on his Knee, Presented the Commission to his Grace, who deliver'd it to the Clerk of the Crown in the Kings Bench; and then with three Reverences, they returned to the Clerks Table, where the Clerk of the Crown in the Kings Bench opening the Commission, Commanded Proclamation of Silence to be made in this manner.

Clerk of Crown. Serjeant at Arms make Proclamation,

Serjeant. O Yes.

Clerk of the Crown. Again.

Serjeant. O Yes.

Clerk of the Crown. Again.

Serjeant. O Yes.

Clerk of the Crown. My Lord High Steward of *England* his Grace, does Straitly Charge and Command all manner of Persons to keep Silence, and to hear the King and Queens Majesties Commission to his Grace my Lord High Steward of *England* directed, openly Read upon pain of Imprisonment.

Which words the Serjeant at Arms Repeated aloud.

Lord High Steward. My Lords, pray be pleased to stand up, and be uncovered whilst their Majesties Commission is Reading.

Which his Grace himself did, and all the Peers.

(Clerk of the Crown Reads.)

WILLIAM R.

Guilielmus & Maria, Dei Gratia Anglie, Scotie, Francie & Hibernie Rex & Regina, Fidei Defensores, &c. Charissimo Consanguineo & Consiliario nostro Thome Marchioni Carmarthen President. Consilii nostri, Salutem. Sciatis quod cum Carolus Dominus Mobum nuper de Parochia Sancti Clementis Dacor in Comitatu nostro Middlesex coram dilectis & fidelibus nostris Lanceloto Johnson Armigero Carolo Lee Milite, Samuele Buck Andrea Lawrence Willielmo Allestree, Thoma Harriott, Theophilo Eyton, Nich. Grice Armigero & aliis Sociis suis Justiciariis nostris ad inquirend. per Sacramentum proborum & legalium hominum de Comitatu nostro Middlesex predicto ac aliis Viis modis & Mediis quibus melius sciverint aut poterint tam infra Libertates quam extra per quos res Veritas melius sciri poterit & inquirend. de quibuscunque Proditionibus Misprisionibus Proditionum Insurrectionibus Rebellionibus Contrafacturis Torturis licturis falsis fabricationibus & aliis falsitat. Moneta hujus Regni nostri Angl. & aliorum Regnorum sive Dominiorum quoruncunque, ac de quibuscunque Mordris Feloniis homicidia Interfectionibus Burglariis Raptibus Mulierum Congregationibus & Conventiculis illicitis verborum Prolacionibus Coadunationibus Misprisionibus Confederationibus falsis Alleganciis Transgressionibus Riotis Routis Retentionibus Escapiis Contempt. falsitat. negligentis Concelamentis manutentionis Oppressionibus Cambiparciis Deceptionibus & aliis Malefactis Offensis & Injuriis quibuscunque Necnon accessariis eorundem infra Comitatu predicto, (tam infra Libertates quam extra) per quoscunque & qualitercunque habuit. fact. perpetrat. sua Commiss. & per quos vel per quemcunque vel quibus quavis qualiter & quomodo & de aliis Articulis & Circumstantiis premissis seu eorum aliquod vel aliquem qualitercunque concernend. plenius veritas & ad eandem Proditiones & al. premiss. audiend. & terminand. secundum Legem & Consuetudinem Regni nostri Angl. nuper assignat. de Felonia & Mordro per ipsum Carolum Dominum Mobum Commiss. & perpetrat. per sacrum proborum & legalium hominum Comitatus nostri Middlesex predicti. indictat. existit. Nos Considerantes quod Justitia est Virtus excellens & Altissimo complacens Volentesque quod predicti. Carolus Dominus Mobum de & pro Felonia & Mordro unde Ipse ut prefertur indictat. existit coram Nobis in presenti Parlamento nostro secundum Leges & Consuetudines hujus Regni nostri Angl. Audiatur, Examinetur Sententietur & Adjudicetur Ceteraque omnia que in hac parte pertinent. debito modo exercentur & exequantur. At pro eo quod Officium Seneschalli Angl. (cujus presentia in hac parte requiritur ut accepimus jam vacat) Nos de Fidelitate Prudentia provida Circumspectione & Industria vestris plurimum Confidentes Ordinaverimus & Constitimus Vos ex hac Causa Seneschall. Angl. ad Officium illud cum omnibus eidem Officio in hac parte debitis & pertinentibus (hac vice) gerend. occupand. & exercend. & ideo Vobis Mandamus quod circa premissa diligenter Intendatis & omnia que in hac parte ad Officium Seneschalli Angl. pertinent & requiruntur (hac vice) faciatis Exerceatis & Exequamini cum effectu. In cuius rei Testimonium has Literas nostras fieri fecimus Patentes Testibus Nobis ipsis apud Westm. tricesimo primo die Januarii Anno Regni nostri Quarto.

Per Ipsum Regem propria Manu Signat.

CHUTE.

GOD Save King William and Queen Mary.

Then Proclamation was made for all Persons but the Peers to be uncovered.

After which, their Majesties Writ of Certiorari, directed to the Commissioners of Oyer and Terminer for the County of Middlesex, to remove the Indictment found before them against the Lord Mobum, with the return thereof, and the Record of the Indictment were Read by the Clerk of the Crown in the Kings-Bench: Thus,

Clerk of the Crown. **G**uilielmus & Maria, Dei Gratia Anglie, Scotie, Francie & Hibernie Rex & Regina, Fidei Defensores, &c. Dilectis & Fidelibus nostris Lanceloto Johnson Armigero Carolo Lee Milite, Samuele Buck Andrea Lawrence Willielmo Allestree, Thoma Harriott, Theophilo Eyton & Nicholao Grice Armigeris, Salutem. Vobis Mandamus quod Indictamentum de Felonia & Mordro unde Carolus Dominus Mobum nuper de Parochia Sancti Clementis Dacor in Comitatu nostro Middlesex coram Vobis in Comitatu nostro Middlesex predicto. & penes vos jam remanens. Indictatus existit ut dicitur cum omnibus illud tangentibus nobis in presenti Parlamento nostro sub sigillis vestris vel unius vestrum deliberetis indilate, imo cum hoc brevi. Testibus nobis ipsis apud Westmonasterium vicesimo Octavo die Januarii Anno Regni nostri Quarto.

CHUTE.

Virtute istius brevis mibi & aliis directi Indictamentum in eodem brevi mentionatum cum omnibus ea tangentibus Dominus Rex & Domina Regina in presenti Parlamento sub sigillo meo in isto brevi contenta in quadam Scheda huic brevi annexa mitto prout interim mibi precipitur.

Respons.

Lanceloto Johnson Armigero unus Justiciariorum dictorum Domini Regis & Domine Regine ad inquirendum, &c. infra scripti.

L. A. JOHNSON.

Middlesex ff. Memorandum quod per quandam Inquisitionem captam pro Domina Rege & Domina Regina apud Hick-Hall in St. John-street in Comitatu Middlesex Die Martis (scilicet) decimo septimo die Januarii Anno Regni Domini & Domine nostrorum Guilielmi & Mariæ Dei Gratia Anglie, Scotie, Francie & Hibernie Regis & Regine Fidei Defensores, &c. Quarto coram Lanceloto Johnson Armigero Carolo Lee Milite, Samuele Buck, Andrea Lawrence, Willielmo Allestree, Thoma Harriott, Theophilo Eyton & Nicholao Grice Armigeris, & aliis Sociis suis Justiciariis Dictorum Domini Regis & Domine Regine ad inquirendum per Sacramentum proborum & legalium Hominum

Hominum Comitatus Middlesex predicti ac aliis Visi modis & mediis quibus melius sciri poterint tam infra libertates quam extra per quos rei veritas melius sciri poterit & inquiri de quibuscunque Proditionibus Mifprisionibus Proditionum Insurrectionibus Rebellionibus contrafacturis toufurn falsis Fabricacionibus & aliis falsitatibus monetae hujus Regni Anglie & aliorum Regnorum sive Dominiorum quorumcunque ac de quibuscunque Mordris Feloniis Homicidiis & interfectionibus & aliis Articulis & offensis in Literis patentibus Dictorum Domini Regis & Domine Regine eis & quibuscunque quatuor vel pluribus eorum inde directis specificatis, nec non accessariis eorundem infra Comitatum predictum tam infra libertates quam extra per quoscunque & qualitercunque habitis factis perpetratis sive commissis ac de aliis Articulis & circumstantiis premissa & eorum aliquod vel aliquam qualitercunque concernentibus plenius veritatem & ad easdem proditiones & alia premissa audiendam & terminandum secundum legem & consuetudinem hujus Regni Anglie assignatis per Sacramentum Samuelis Philipps, Thoma Head, Georgii Sparkes, Thoma Lamm, Johannis Waterman, Willielmi Keyte, Johannis Usher, Willielmi Pangborne, Arthur Alliborne, Willielmi Deverell, Jacobi Garrison, Anthony Hartley, Roberti Rogers, Thoma Knight & Thoma Long prohorum & legalium hominum Comitatus predicti ad tunc & ibidem juratorum & oeratorum ad inquirendum pro dicto Domino Rege & Domina Regina & pro corpore Comitatus predicti presentatum existit modis & formis prout patet in quodam indictamento huic Schedule annexo.

L. A. JOHNSON.

Middlesex ff. Juratores pro Domino Rege & Domina Regina super Sacramentum suum presentant quod Richardus Hill nuper de Parochia Sancti Clementis Dacorum in Comitatu Middlesex Generosus & Carolus Dominus Mobun nuper de Parochia predicta in Comitatu predicto Deum prae oculis suis non habentes sed instigatione Diabolica mori & seducti nono die Decembris Anno Regni Domini & Dominae nostrorum Gulielmi & Marie Dei Gratia Anglie, Scotie, Francie & Hibernie Regis & Regine, Fidei Defensorum, &c. Quarto vi & armis, &c. apud Parochiam predictam in Comitatu predicto in & super quendam Willielmum Mountford Generosum in pace Dei & dictorum Domini Regis & Domine Regine nunc ad tunc & ibidem existentem Felonie voluntarie & ex malitiis suis premeditata insulsum fecerunt. Et quod predictus Richardus Hill cum quodam Gladio Anglice (a Rapiere) de ferro & Chalybe confecto valoris Solidorum quem ipse idem Richardus Hill in manu sua dextra ad tunc & ibidem extractum habuit & tenuit prefatum Willielmum Mountford in & super dextram partem corporis Anglice (the right side of the Body) ipsius Willielmi Mountford prope dextram Mammillam Anglice (the right Pap) ejusdem Willielmi ad tunc & ibidem Felonie voluntarie & ex malitia sua premeditata percussit & pupugit, Anglice (did strike and thrust) dans eidem Willielmo Mountford ad tunc & ibidem cum Gladio extracto predicto in & super predictam dextram partem corporis ipsius Willielmi Mountford prope dictam dextram Mammillam ejusdem Willielmi unum vulnus mortale latitudinis unius pollicis & profunditatis viginti pollicium, de quo quidem vulnere mortali predictus Willielmus Mountford a predicto nono die Decembris Anno supradicto usque decimum diem ejusdem Mensis Decembris Anno supra dicto apud Parochiam predictam in Comitatu predicto languerat & languidus vixit quo quidem decimo die Decembris Anno supra dicto predictus Willielmus Mountford de vulnere mortali predicto apud Parochiam predictam in Comitatu predicto obiit. Et quod predictus Carolus Dominus Mobun tempore Felonie & Mordris predicti per prefatum Richardum Hill modo & forma predictis Felonie voluntarie & ex malitia sua premeditata factorum & perpetratorum ad tunc & ibidem Felonie voluntarie & ex malitia sua premeditata fuit presens auxilians abettans confortans assistens & manutens prefatum Richardum Hill ad predictum Willielmum Mountford in forma predicta Felonie voluntarie & ex malitia sua premeditata interficiendum & morderandum. Et sic Juratores predicti super Sacramentum suum predictum dicunt quod predictus Richardus Hill & Carolus Dominus Mobun prefatum Willielmum Mountford modo & forma predictis Felonie voluntarie & ex malitiis suis premeditatis interfecerunt & morderaverunt contra pacem dictorum Domini Regis & Domine Regine nunc coronam & dignitates suas, &c.

Then his Grace Remov'd from the Wooll-Pack to the Chair, which was placed upon an Ascent just before the uppermost step of the Throne, and Seated himself in the Chair.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serjeant. O Yes.

Clerk of the Crown. Chief Governor of the Tower of London, return the Precept to you directed, together with the Body of Charles Lord Mobun your Prisoner forthwith into the Court, upon Pain and Peril will fall thereon.

Then the Deputy Governor of the Tower, brought the Lord Mobun to the Bar, having the Ax carried before him by the Gentleman Jaylor of the Tower, who stood with it at the Bar, on the Right Hand of the Prisoner, turning the Edge from him.

The Prisoner at his Approach to the Bar, made three Bows, one to his Grace the Lord High Steward, the other to the Peers on each Hand, and his Grace and all the Peers, returned the Salute to him.

Lord High Steward. My Lords, my Voice will not serve me to speak at such a Distance, so as to be Heard, and therefore I must beg leave of your Lordships to come down to the Wooll-Pack again.

Lords. Ay, Ay.

Then his Grace came down, and Seated himself on the Wooll-Pack.

Lord High Steward. My Lord Mobun, I am first to let your Lordship know, you are not to hold up your Hand upon your Arraignment; and I am to let you that are Counsel at the Bar likewise know, that both you and the Witnesses, are to Direct your selves to the Court, in the Style of my Lords, speaking to the Court.

Then

Then there was a little Pause, after which his Grace Addressed himself to the Prisoner thus.

Lord High Steward. My Lord, you are brought here before this Supream Court, in Order to your Tryal.

The Charge against you is, for the Murther of one of the Kings Subjects, which is a Crime the King will at no time pass over in the meanest Mans Case, without making a strict inquiry into the Offence, and causing due Punishment to be inflicted on the Offender.

This my Lord is charged upon you, not by any Slight Information; but by the Grand Inquest of this County, made up of Gentlemen of good Worth and Consideration. It is true, that this Inquest does not amount to much more than a bare Accusation; and therefore it ought not to be made any use of, so as to Prejudice your Lordships Tryal; but it is that which is the Ground of presenting this Black Crime before My Lords your Peers, who cannot receive it without some trouble, to find any one of their Body suspected to be Guilty of an Action so Dishonourable as this is Represented to their Lordships.

My Lord, you are a very young Man, and therefore it is to be hoped, you cannot so early have had your Hands in Blood. And the same Reason, because you are so young, may perhaps make you conceive, that you are under some greater Disadvantage in making your Defence, than you would be if your Experience had been longer.

But to remove any Misapprehension you can have of that kind, it is very proper to put your Lordship in mind, that you have the good Fortune now, to be Tried for this Fact in full Parliament, where no Evidence will be received, but such as must be Manifest and plain, beyond all Contradiction; so that you have nothing to fear here, but your own Guilt.

In the next place, My Lord, you need not be Discourag'd for the want of Council, for the Honour of this Court is such, as will take Care to inform you of any Advantage that the Law can give you. And you may be farther assured, that no Art or Skill in Arguing, can take any place here, either to prevail against your Innocency, or to Divert My Lords from doing you exact Justice. Nay, I dare presume to say on the part of My Lords, that if there be room for any Abatement of Severity, you may Reasonably expect to find it from their Lordships.

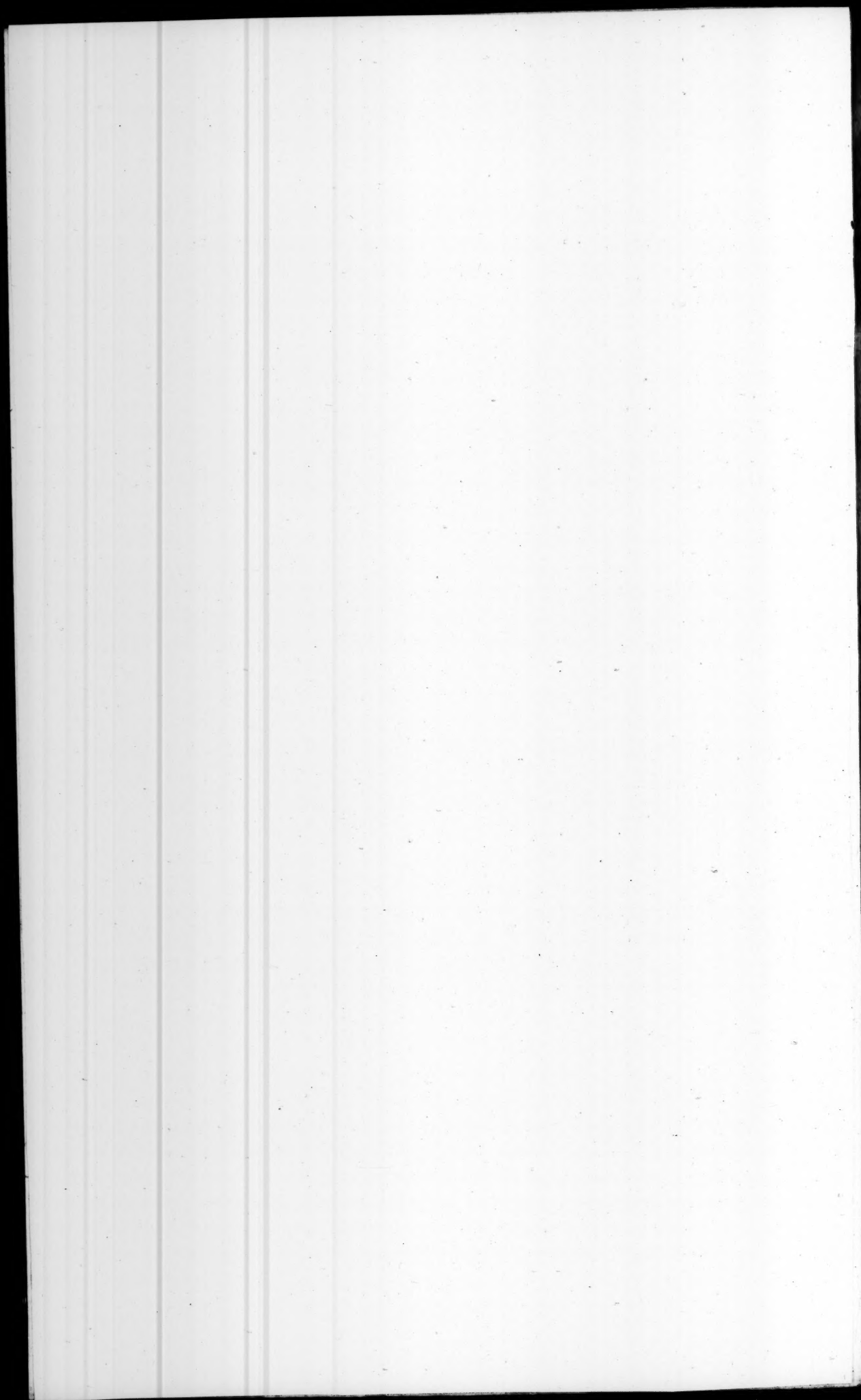
These Considerations, My Lord cannot but give you great Consolation under your unhappy Circumstances, it being most certain, that nothing but your own Crimes can hurt you.

But at the same time I must tell you, that your Lordship is not to flatter your self with an Expectation of Hope, that any Favour will be shewed you beyond what Honour and Justice can allow: And I hope you have well considered, that it is no less than your Life, your Honour, and your Estate, that you are now to Defend, inasmuch, that I cannot doubt but your Lordship has Recollected and prepar'd your self, for the Defence of what so very much concerns you.

I will not therefore Detain you any longer, than to give you some Directions in the Order and Method of your Tryal; and those are, that your Lordship do give Attention carefully to the Reading of your Indictment. That you give no Interruption to the Council or Witnesses when they speak against you; and when the proper time shall come for your Witnesses to be Examined, and that you are to be Heard in your own Defence, I will give you due notice of it:

Your Lordship may also be certain that when it shall come to your turn to speak, you shall be heard with all the Patience and Favour that the Matter will bear; and at last, when all hath been heard that can be said on both sides, your Lordship needs not doubt, but that My Lords will give such a Judgment as will be Suitable to the Honour, Justice and Equity of this great Court. Clerk Read the Indictment to my Lord.

Clerk of the **C** Charles Lord Mohun, You stand Indicted by the Name of Charles Lord Mohun, of the Parish of St. Clement Danes in the County of Middlesex, For that you, together with one Richard Hill of the same Parish and County Gentleman, who is fled, and withdrawn from Justice, not having the Fear of GOD before your Eyes, but being moved and seduced by the Instigation of the Devil, the 9th Day of December, in the 4th Year of the Reign of our Sovereign Lord and Lady William and Mary, by the Grace of GOD of England, Scotland, France and Ireland, King and Queen, Defenders of the Faith, &c. with Force and Arms, &c. at the Parish aforesaid, in the County aforesaid, in and upon one William Mountford Gent. in the Peace of GOD, and our said Sovereign Lord and Lady, the King and Queen, then and there being feloniously, wilfully, and of your Malice aforethought, did make an Assault. And that he the said Richard Hill, with a certain Rapier made of Iron and Steel, of the Value of 5 s. which he the said Richard Hill, in his Right Hand then and there had and held drawn, the said William Mountford, in and upon the Right side of the Body of him the said William Mountford, near the Right Pap of him the said William, then and there feloniously, wilfully, and of his Malice aforethought, did strike and thrust, giving unto him the said William Mountford then and there, with the Sword drawn aforesaid, in and upon the aforesaid Right side of the Body of him the said William Mountford, near the said Right Pap of the said William, one Mortal Wound of the breadth of one Inch, and of the depth of twenty Inches, of which said Mortal Wound the aforesaid William Mountford, from the aforesaid ninth Day of December, in the Year aforesaid, unto the tenth Day of the same Month of December, in the Year aforesaid, at the Parish aforesaid, in the County aforesaid, did languish; and languishing did live, on which said tenth Day of December,



in the Year aforesaid, the aforesaid William Mountford, of the Mortal Wound aforesaid, at the Parish aforesaid, in the County aforesaid, died. And that you the said Charles Lord Mohun, at the time of the Felony and Murder aforesaid, by the aforesaid Richard Hill, in manner and form aforesaid, feloniously, wilfully, and of his Malice afore-thought done and committed, then and there feloniously, wilfully, and of your Malice afore-thought, were present, aiding, abetting, comforting, assisting and maintaining the aforesaid Richard Hill, the said William Mountford in form aforesaid, feloniously, wilfully, and of his Malice afore-thought to kill and murder. And so that you the said Charles Lord Mohun, and the said Richard Hill, the said William Mountford in manner and form aforesaid, feloniously, wilfully, and of your Malice afore-thought, did Kill and Murder, against the Peace of our said Sovereign Lord and Lady the King and Queen, their Crown and Dignity.

How say you Charles Lord Mohun, Are you Guilty of this Felony and Murder, or not Guilty?

Lord Mohun. Not Guilty my Lords.

Clerk of the Crown. How will your Lordship be Tried?

Lord Mohun. By God and my Peers.

Clerk of the Crown. God send your Lordship a good Deliverance?

Lord High Steward. Will your Lordships please, that the Judges may be Covered?

Lords. Ay, Ay.

Then the Judges put on their Caps.

Clerk of the Crown. Serjeant at Arms make Proclamation.

Serjeant. O Yes:

Clerk of the Crown. If any one will give Evidence on the behalf of our Sovereign Lord and Lady the King and Queens Majesties, against Charles Lord Mohun the Prisoner at the Bar, let them come forth, and they shall be heard, for now he stands at the Bar upon his Deliverance.

Lord High Steward. You Gentlemen that are of Council, will you begin.

Serjeant Tomson. May it please your Lordships, I am ~~of Council to the King and Queen~~ against my Lord Mohun the Prisoner at the Bar, who stands Indicted for the Murther of one William Mountford.

*The King
council*

Lord Mohun. My Lords.

Lord High Steward. My Lord Mohun, what does your Lordship say?

Lord Mohun. Do not your Lordships think it proper, that I should have Pen, Ink and Paper?

Lords. Ay, by all means.

Lord High Steward. Yes, give my Lord Pen, Ink and Paper.

Which was carryed to him by one of the Clerks.

Lord High Steward. Go on Sir now.

Serjeant Tomson. My Lord Mohun Stands Indicted here before your Lordships, for the Murder of one William Mountford, and the Indictment sets forth, that one Richard Hill, who is since fled from Justice, did upon the 9th. of December last, make an Assault upon this same William Mountford, and that the said Lord Mohun, did likewise make that Assault. The Indictment particularly sets forth, that this Hill by a Sword or Rapier which he had in his Hand, did give this William Mountford a Wound on his Right Side; and that Mountford did Languish of that Wound till the next Day, which was the 10th. of December, when he Dyed; and that at the time of the giving the Wound, My Lord Mohun was present, and was Aiding, Abetting, Assisting and Comforting of Hill; and thereupon we do say, he is Guilty of this Murder, and for this he stands Indicted. It is my Duty to open the Indictment to your Lordships, we shall call our Proofs, and give you the Evidence, and then leave it to your Lordships Judgment.

Mr. Attorney General. My Lords, the Indictment has been opened, and by that your Lordships see the Noble Lord at the Bar, stands Charged with the High Crime of Murder.

My Lords, his Peerage gives him a Right to be Tried in this Great and Noble Court; and as my Lord has Just Reason to put a High Value upon this Priviledge, so on the other Hand, their Majesties who are making Inquisition for the Blood of one of their Subjects have a full Assurance, that no Compassion for my Lords Youth, no Consideration of his Quality, or Regard for one of your own Order, will make your Lordships unmindful of the Heinous Nature of the Crime, or cause any Variation in the Steadiness of your Justice.

It is true, my Lords, the difference between the Tryal of a Peer and a Commoner is very great, but there is no difference in the Crime, whether committed by the one or the other: It is the same Law by which they must be Tried and Judged; and that Fact which would be Murder in the meanest Subject, is no less than Murder if committed by the greatest Peer.

My Lords, it is not insisted upon, that the Noble Lord at the Bar gave the Mortal Stroke with his own Hand; Nor is it so alledged in the Indictment. The Indictment findeth the Wound to have been given by the Hand of Richard Hill; but if my Lord the Prisoner was of his Party, to have concurr'd with him in the Thing, if he was Present and Abetting to the Fact, though he did not strike a stroke, though he was no more than a looker on, when the thing was done, the Law saith, he is a Principal in the Murder.

Whether my Lords Case will fall within this Rule, is the Point for your Lordships to Determine, when the Witnesses are heard.

My Lords, it is my part to give an Account of the Nature of the Evidence, to the end, that your Lordships may the more easily go along with the Witnesses, as they are Examined, and more readily make your Observations upon what they say.

This I shall do as shortly, and as exactly as I can, without pretending to Aggravate any thing, which I could never think did become any one in my Station; and I am sure, would be to very little purpose before such a Judicature as this; for after all, your Lordships will found your Judgments upon the Fact, not as it is Represented by us, but as it appears upon the Oaths of the Witnesses.

The time when the Fact for which my Lord is to be Tried was Committed, was the 9th Day of December last.

The Occasion of it, was this.

Captain Hill, the Person mentioned in the Indictment, had for some time before made Addresses of Courtship in the way of Marriage, to one Mrs. Bracegirdle, an Actress in the Play-House; But these Proposals were totally Rejected. This put Mr. Hill in a very great Rage, and he Declared, that Mr. Mountford (the Person Slain) was the only Man that stood in his way, and with many Execrations, expressed his Resolution to be Revenged upon him: This he did at several times, and before several Persons.

The same Day the Fact was Committed, in the Morning, My Lord who is now at the Bar, and Captain Hill went together to Hire a Coach to go to Tottenham, and Directed the Coachman to have six Horses Ready, but to be waiting for them in Drury-Lane near the Play-House, with only two Horses in his Coach, about nine a Clock the same Night. My Lord and Captain Hill Dined together that Day, at a Tavern in Covent-Garden, and there much of their Discourse was about Mrs. Bracegirdle; and both of them did freely declare their Opinion, that Mr. Mountford lay with her. But the Principal part of their Discourse, was in Relation to a Design which they had formed for the Seizing upon Mrs. Bracegirdle, and forcing her into a Coach, and carrying her away some where into the Country.

This was to be executed that Night; and accordingly they were then providing Arms for that purpose; Mr. Hill did acquaint my Lord, that the Soldiers would be ready by the time; and my Lord took notice, that the carrying her off, would stand Mr. Hill in 30 l. at least. Thereupon (as your Lordships will hear from the Evidence) Mr. Hill used this Expression, If the Villain Resist I will Stab him; and then my Lord was pleased to say, That he would stand by his Friend.

After they had Continued there some time, being about to part, Mr. Hill told my Lord, that unless he was at the Play-House by six a Clock, the thing could not be Effected, and he should be undone: But my Lord promised to be there at the time.

Accordingly they both met at the Play-House, and after they had been behind the Scenes, and informed themselves that Mrs. Bracegirdle would not be there that Night, they left the Play-House.

But it seems they had got Intelligence, that she was to Sup that Night at one Mr. Pages House in Drury Lane; and therefore they planted themselves with their Soldiers near that place, over against my Lord Crews House.

Lord High Steward. They who do you mean?

Mr. Attorney General. My Lord, the Prisoner at the Bar and Mr. Hill. After they had continued there for a Considerable time (I think till towards Nine a Clock) they began to have a Jealousie, that they might be under some misinformation; and therefore ordered the Coachman to Drive them into Hayward-Street, the place where Mrs. Bracegirdle lodged, and observing some Persons Walking near her Lodging, they said, they doubted they were deceived, and had been betrayed.

But they soon came back again to Drury Lane, and fixed themselves in their former Station. About Ten a Clock, Mrs. Bracegirdle accompanied with Mr. Page (at whose House she had been) and with her Mother, and (I think) her Brother going Home; when they came to the Place where the Coach stood, with the Door open, and my Lord at the Bar placed in the Coach; and several Cases of Pistols by him, the Soldiers together with Captain Hill, came up to Mrs. Bracegirdle, Seized upon her; and would have forced her into the Coach; Mr. Hill endeavoured with Violence, to force away Mr. Page, who was then leading her, and struck him; but Mrs. Bracegirdles Mother holding her about the middle, they could not readily get her into the Coach, and during this struggle, there was an Opportunity given to Mr. Page to call for help, and several Persons coming presently from the Houses near, and the People in the Street beginning to rise upon them, they found it impracticable to effect their Design at that time.

Thereupon the Soldiers were Dismissed; but my Lord and Mr. Hill, would not be denied the Liberty to wait upon Mrs. Bracegirdle to her Lodging, and accordingly together with Mr. Page and her Mother and other Persons, they went together to Mrs. Bracegirdles Lodging, at one Mrs. Brownes House in Hayward-Street, Mr. Mountfords House was in Norfolk Street, below Howard Street, Howard Street is a Cross Street, which leads from Arundel Street, and through Norfolk

Street

Street to Surrey Street; and so it was not possible for *Mountford* to come to his own House, but whoever should fix themselves in *Howard Street*; must have the Opportunity of seeing him.

As they were going along, *Hill* swore he would be Reveng'd; but nam'd no Body.

After that *Mrs. Bracegirdle* and the Company were come to her Lodging, she and her Mother, and *Page* went into the House: My Lord *Mobun* and Mr. *Hill* staid in *Howard Street*, and there continued for near two Hours together, and for the most part of that Time, with their Swords drawn.

Mr. *Mountford*, as it hapned, did not come Home till late that Night; so that their Stay being long, my Lord and Mr. *Hill* thought fit to lend for Wine, and had one or two Bottles, which they drank in the Street, near *Mrs. Bracegirdles* Lodgings.

During this Time, they were heard to say (that is, one of them was; but which of them, by reason of the Darkeness, we cannot tell) That if he could not be revenged that Night, he would the next Morning; upon which, a Boy, who was there with them; (but who the Boy was we cannot discover) said, Good my Lord do not do it, alter your Resolution. I did observe before, that *Mrs. Bracegirdle* Supped that Night at Mr. *Pages* House, and *Mrs. Page* having heard of the great Outrage and Tumult in the Street, and that her Husband was gone Home with *Mrs. Bracegirdle*, and being under a Concern for his Safety, thought fit to follow him thither. As she entred into the House, she saw my Lord *Mobun* and Captain *Hill* near the Door; and presently after, before she could have a full Relation of what had happened in *Drury Lane*, *Mrs. Brown*, the Owner of the House where *Mrs. Bracegirdle* lodged, came into the Room, and told them, that my Lord *Mobun* and *Hill* were waiting for Mr. *Mountford*, and that she was apprehensive it was with no good Intention. Thereupon *Mrs. Page* thought it requisite to go to *Mrs. Mountfords* House, to give her Notice of it, and to desire her to find out where her Husband was, and to caution him not to come Home, unless he brought a good Guard with him.

As she went out, she saw them both with their Swords drawn, and she acquainted *Mrs. Mountford* with it, who sent to several Places in search of her Husband, but she was so unfortunate, that the Messengers could not find him.

Whilst this was doing, the Watch came into *Howard Street*, being alarm'd at the Report that two Gentlemen were Drinking in the Street, and walking there with their naked Swords. The Watch demanded of my Lord *Mobun*, why he had his Sword drawn. My Lord was pleas'd to return them this Answer, That he was a Peer of the Realm, and bid them touch him if they durst. They then asked *Hill* why his Sword was out, and my Lord made the Excuse for him, That *Hill* had lost his Scabbord.

The Watch observing the Drawer who attended upon them, and knowing that he lived at a Tavern in *Surrey Street*, went thither to inform themselves, who these Persons should be, that were walking in such a Manner at that time of Night. But they were hardly got into the House before they heard the Cry of Murder.

The Witnesses will inform your Lordships, that as Mr. *Mountford*, about 12 a Clock, was coming Home, my Lord *Mobun* met him, and saluted him. Mr. *Mountford* said, My Lord *Mobun*, What does your Lordship do here at this time of Night? And my Lord made answer, He supposed Mr. *Mountford* had been sent for. No, says *Mountford*, I came by chance. My Lord said to him again, I suppose you have heard about the Lady. Mr. *Mountford* answered, I hope my Wife has given your Lordship no Offence. No, says my Lord *Mobun*, It's *Mrs. Bracegirdle* I mean. To this, the Reply Mr. *Mountford* was, *Mrs. Bracegirdle* is no concern of mine, but I hope your Lordship does not countenance any ill Action of Mr. *Hill*.

Upon this *Hill* came up to them, and said to my Lord, it was not a time to discourse of those Matters; and as my Lord continued to talk with *Mountford*, *Hill* struck *Mountford* first, and in a manner, at the same instant made a Pass at him, and run him clean through the Body, and this before Mr. *Mountford's* Sword was drawn. Immediately upon this there was a Cry of Murder, and the Watch came with what haste they could, and took my Lord *Mobun*, but *Hill* was fled; when my Lord was taken, his Sword was not drawn.

As soon as my Lord *Mobun* was taken, the first Question he asked was, if *Hill* was apprehended; and when he was told he was not, he said he was glad of it, and did not care if he were hang'd for him. And he said, adding at the same time, That he was sorry that Mr. *Hill* had so little Money about him, and ~~that he had~~ all that he had in his own Pocket; and he did then also own to the Watch, that he had changed Coats with Mr. *Hill*, and had *Hill's* Coat on him at that time.

My Lords, this is the Substance of the Evidence, and in this Order, with your Lordships Leave, we shall offer the Proofs to your Lordships; I do not doubt, but your Lordships will attend to the Evidence with all Care, and will determine upon it according to Justice and Honour. I will detain your Lordships no longer, but proceed to call the Witnesses to prove what I have opened.

L. H. *Steward*. Pray call your Witnesses together, and let me know who you begin with.

M. At.

Mr. At. Gen. My Lords, We do not know what Place is designed for the Witnesses; but if they are to be on the other side, and this Croud do interpose between us and them, it will be impossible for us, who are the King's Council, to hear what they say, or know how to proceed.

Lord High Steward. There must be Room made there for the Witnesses, where are your Witnesses *Mr. Attorney*?

Clerk of the Crown. If you please to name them Sir, we will call them.

Mr. Attorney General. Call *Mr. John Hudson*, and *Mr. George Powell*.

Lord High Steward. I know not how this is ordered, but way must be made there by the Bar, that the Prisoner may see the Witnesses, and they him.

Mr. Attorney General. Yes my Lord, by all means.

Mr. Serjeant Tremaine. If your Lordships please, the Witnesses will be most Conveniently heard, if they come and stand here by us.

Mr. Attorney General. If your Lordships please, it will not be possible either for my Lord at the Bar, or for us to hear what the Witnesses say: Unless they be brought into this place to stand between us.

Lord High Steward. My Lord Great Chamberlain, be pleased to give order for them to be brought in thither.

Then the Lord Great Chamberlain went down to the Bar.

Lord Great Chamberlain. The Witnesses must be brought to this place.

And accordingly, way was made for the Witnesses, as called to stand at the Bar between the Prisoner and the Kings Council.

Lord High Steward. Give me the Name of him that you begin with.

Mr. Attorney General. We begin my Lords, with *Mr. John Hudson*, who came to the Bar, and one of the Clerks held the Book to him, upon which he laid his Hand.

Clerk of the Crown. Harken to your Oath Sir, the Evidence that you shall give on the behalf of our Sovereign Lord and Lady the King and Queens Majesties, against *Charles Lord Mobun* the Prisoner at the Bar, shall be Truth, the whole Truth, and nothing but the Truth: So help you God.

Then he kissed the Book.

Mr. Attorney General. *Mr. Hudson*, Do you give my Lords an account what you know of any Applications of Courtship made to *Mrs. Bracegirdle* by *Mr. Hill*, and what became of it; and what you heard *Hill* say about her, or about any one else Relating to that matter.

Hudson. My Lord, I had the Honour to be invited to Supper with my Lord *Mobun*, at the *Rose-Tavern* in *Covent-Garden*, where I found Captain *Hill* with his Lordship.

Mr. Attorney General. When was this Sir, tell the time.

Hudson. This was three Nights before this unfortunate Accident hapned, there I found Captain *Hill*, and we supped together; and after Supper, Captain *Hill* raised a Discourse of *Mrs. Bracegirdle* and *Mr. Mountford*; says He, I should not doubt the Success of my Amour with *Mrs. Bracegirdle*, if I were not obstructed by *Mountford*, whom I design to be the Death of: This is Truth upon my Oath. My Lord *Mobun* was in the Company; but I cannot say that my Lord made any Reply to the thing, or took any notice of it: But this Captain *Hill* did say, not only then, but several times before.

Mr. Attorney General. Did he say it at any other time in your Hearing.

Hudson. Yes, several times before.

Mr. Attorney General. Do you know any thing more of this matter.

Hudson. No more, than that my Lord *Mobun* that very Night that *Mr. Mountford* was killed; and Captain *Hill* came into the Scene-Room of the Play-House, and my Lord *Mobun* had Captain *Hill's* Coat on, and Captain *Hill* had my Lord *Mobun's* Coat on, and they changed their Cloaths in the Play-House: I saw them change their Cloaths; but what their Design was, I cannot tell.

Mr. Attorney General. When was that Sir.

Hudson. That very Night that the Gentleman that is Dead, *Mr. Mountford*, was killed.

Mr. Attorney General. You say, that my Lord *Mobun* was present, when that Discourse of *Hill* was, about *Mountford* at the Tavern.

Hudson. Yes, but I cannot say my Lord took any notice of it, for he made no Reply that I heard.

Lord High Steward. Have you done with this Witness.

Mr. Attorney General. Yes, my Lord,

Hudson. This is all that I know of the matter.

Lord High Steward. My Lord *Mobun*, have you any thing to say to this Witness.

Lord Mobun. No my Lord.

Mr. Attorney General. Then our next Witnesses Name is *George Powell*.

Who was Sworn in like manner.

Mr. Attorney General. *Mr. Powell*, you have heard the Questions that have been asked, *Mr. Hudson*, Pray will you make Answers to them; and give my Lords an Account what you know of this matter.

Powell.

Powell. May it please Your Lordships, about 5 or 6 days before Mr. *Mountford* was Wounded, I was in Company with Captain *Hill*, and he began Mrs. *Bracegirdles* Health. I told him I would Pledge it. Says he, I am sure there is no Bar between me and Mrs. *Bracegirdle*, but *Mountford*; and I am Resolved to be Revenged on him, one way or another. About 3 Days afterwards I was at Supper with my Lord *Mobun* and Captain *Hill*, and another Gentleman, and the same Discourse arose again, and Captain *Hill* Whispered me in the Ear, says he, I am resolved to have the Blood of *Mountford*. I told him I did not think it fit for him to speak so behind a Gentleman's back, and to me who was his Friend. I said I would acquaint Mr. *Mountford* with what he said, and I did not doubt but he would give him the satisfaction of a Gentleman for any Injury he did him. I heard no further Discourse at that time, nor do I know more of that matter, till the Night that Mr. *Mountford* was Wounded, when I saw him lying upon the Parlor Floor, and afterward saw him laid to Bed, and sat up all Night with him, and about four a Clock in the Morning I asked Mr. *Mountford* how the thing happened. He told me Captain *Hill* killed him basely; I asked him if his Sword was drawn; Yes, says he, but it was after I had received my Wound, for whilst my Lord *Mobun* talked to me *Hill* run me through.

Mr. Att. Gen. At that time, when those Words were spoken at Supper, That he designed to be the Death of *Mountford*, was my Lord present?

Powell. Yes my Lord *Mobun* was present, but he was Talking to Colonel *Tredenham*.

Mr. Att. Gen. Did my Lord *Mobun* say any thing to what *Hill* said?

Powell. I did not hear him make any Answer to it at all.

Mr. Att. Gen. Do you know any thing else in Relation to this Fact.

Powell. Nothing else but that Captain *Hill* did give a Letter to be delivered to Mrs. *Bracegirdle*, but I know not whether it was delivered or not, and he often told me he would Marry her with all his Heart.

Mr. Att. Gen. You say you had that Discourse with *Mountford*, when he lay a Dying.

Powell. It was about four a Clock, and he died about One.

Mr. Att. Gen. Was there any thing said about my Lord *Mobun* at that time?

Powell. Nothing but that my Lord *Mobun* was Talking to him, whilst the other ran him through.

L. H. Steward. If I understand you aright, you say nothing against my Lord *Mobun*, but his being by one time at Supper when *Hill* said some Words about *Mountford*, and then the other thing you say is what *Mountford* told you after he was Wounded. That my Lord was Talking to him, when *Hill* gave him the Wound.

Powell. Yes, My Lord, That is all that I heard.

L. H. Steward. Has your Lordship any thing to say to this Witness?

L. Mobun. No, My Lord.

Mr. Att. Gen. The next Witness that we shall desire to call is Mrs. *Knight*.

Who was S W O R N.

Mrs. Knight. I have nothing to say to my Lord *Mobun*; but what I have to say, is to Mr. *Hill*. About 4 days before Mr. *Mountford* was Killed, Mr. *Hill* came to me, and spoke to me about Mrs. *Bracegirdle*: He told me he was satisfied she hated him, I told him I did not believe she hated any body, or loved any Body: Yes, he said, she did love some body, but he had thought of a way to be even with that Body. Upon the Wednesday Night before Mr. *Mountford* was killed, he came to me as I was coming out of the Dressing Room; sayeth he, Mrs. *Knight* let me speak a Word with you, says he, you are very great with Mrs. *Bracegirdle*, and I desire you to be so kind, as to speak to her for me, and I would beg of you if you would give me leave to give her this Letter from me: No, said I, Mr. *Hill*, I beg your Pardon; you say she hateth you, and if she hateth you, she will not love any body that speaketh for you; and I am not fond of creating my self Enemies in the House, knowing I have some already. What Enemies, saith Mr. *Hill*, *Mountford* do you mean? And then repeating a great Oath, I shall find a way with him speedily.

L. H. Steward. A way, with what?

Mrs. Knight. A way with him speedily. *Hill* said it of Mr. *Mountford*.

L. H. Steward. What do you call this Witness for, Mr. *Attorney* what use do you make of her Evidence against my Lord *Mobun*?

Mr. Att. Gen. My Lord, the use that we would make of these Witnesses is to give an Account of the whole Fact from the Beginning to the End, *Hills* Malice, and what was the Occasion of it, his Design in coming there that Night, and what he did, and to leave it to your Lordships, to Judge what influence this will have, how far it will affect my Lord *Mobun*. The next Witness is Mrs. *Sandys*.

L. H. Steward. What is this Womans Name?

Mr. Att. Gen. Mrs. *Elizabeth Sandys*.

She was S W O R N.

Mr. Att. Gen. Mrs. *Sandys*, give my Lords an Account, whether you were present with my Lord *Mobun* and Mr. *Hill* at the Tavern that day that Mr. *Mountford* was killed, and what passed there.

Sandys. I Dined with my Lord *Mobun* and Captain *Hill*, at the *Three Tuns* in *Shandois-street*, and there arose a Discourse about Mrs. *Bracegirdle* and *Hill*, and my Lord *Mobun* asked me, if I thought *Mountford* had lay with her or no. I said I could not tell; presently after says my Lord *Mobun*, it will cost *Hill* 50 Guineas this Design. Saith Mr. *Hill*, if the Villain offers to resist I will Stab him; saith my Lord *Mobun*, I will stand by my Friend. When this was done, Mr. *Hill* desired Mr. *Brough* to borrow a Case of Pistoils of Captain *Leister*, and he said he would not borrow them himself, for he doubted, if he knew of the Design he would not lend them. When that was done, Captain *Hill* told me he had a Coach and Six Horses in *Witch-Street*, to seize Mrs. *Bracegirdle*, and carry her away into the Country; and my Lord *Mobun* said, he would stand by his Friend: And when my Lord *Mobun* went away, *Hill* said to him; my Lord if you be not there by Six a Clock, I am Ruined. Saith my Lord *Mobun*, upon my Word and Honour I will be at the Play House by Six.

L. H. Steward. My Lord *Mobun*, have you any thing to say to that Witness?

L. Mobun. Yes, My Lord, I desire to have her asked, whether she is a Maid or a Married Woman

L. H. Steward. You hear the Question, but I do not know what use my Lord will make of it.

Mr. Att. Gen. You can easily answer, whether you are Married or Unmarried.

L. H. Steward. That Question is very fair; are you a Married Woman, or a single Woman?

Sandys. I am a single Woman, my Lord.

Mr. Att. Gen. Pray Mrs. *Sandys* Repeat the Words that my Lord *Mobun* said, when *Hill* said if the Villain resisted he would Stab him.

Sandys. My Lord *Mobun* said nothing in the World, but that he would stand by his Friend.

L. H. Steward. Have you any further Questions, Mr. Attorney to ask this Witness?

Mr. Att. Gen. I have nothing more to ask her my Lord.

L. H. Steward. What say you my Lord *Mobun*; would you ask her any thing else?

L. Mobun. No, my Lord.

L. H. Steward. Then withdraw.

Which she did.

Mr. Att. Gen. The next Witness we call is Mr. *Rogers*.

Who was S W O R N.

L. H. Steward. What is this Witnesses Name?

Mr. Att. Gen. *Rogers*, my Lord.

L. H. Steward. What is his Christian Name?

Mr. Att. Gen. *John*. If your Lordships please to remember, that the last Witness Mrs. *Sandys* said, That Mr. *Hill* desired my Lord *Mobun*, not to fail of being at the Play-House by Six a Clock, and that he was undone if he did not come; and my Lord promised upon his Word and Honour that he would come: Now we call this Witness to prove, that they met at the Play-House according to the Appointment on the 9th of *December*.

Rogers. My Lord, All that I know of this matter was, That my Lord *Mobun* and Captain *Hill* were at the Play-House that Night, and that which made me take particular Notice of their being then at the Play-House, tho' they had been frequently there before together, was that Captain *Hill* had my Lord *Mobun's* Coat on, and my Lord *Mobun* had Captain *Hill's* Coat on.

Mr. Att. Gen. Did you observe any thing else, when they were at the Play-House?

Rogers. Nothing but only some Words that passed between Captain *Hill* and my Lord *Mobun*, when I went to ask them for the overplus of the money for coming in, because they came out of the Pit upon the Stage; he said he would not give it me, but if I brought any of our Masters, he would Slit their Noses or something to that Effect.

Mr. Att. Gen. Speak that over again.

Rogers. I asked them for money, that they ought to pay more than the rest that were in the Pit, because they came upon the Stage, and they would not give it me, but he said if I brought any of our Masters, he would Slit their Noses, or cut their Faces, or to that Effect.

L. H. Steward.

Lord High Steward. My Lord, will your Lordship ask him any Questions?

Lord Mobun. No my Lord.

Lord High Steward. Call another Witness then.

Mr. Attorney General. My Lords, with your Lordships Favour, the next Witness that we shall call, is the Coach-Man, *William Dixon.*

Who was Sworn.

Mr. Attorney General. Mr. Dixon, do you remember the Day when Mr. Mountford was killed?

Dixon. Yes Sir.

Mr. Attorney General. Pray acquaint my Lords, what Persons you carryed in your Coach that Day, whether you carryed my Lord Mobun and Mr. Hill, and to what place, and where you waited for them.

Dixon. If it please your Lordships, Captain Hill and my Lord Mobun came in a Hackney Coach to my Gate, where I live, and I was just a going to set my Coaches into the Street for Hyre: They Bargained with me for six Horses, and I was to have thirty Shillings to set them down at *Totteridge* on this side *Barnet*. I asked them whether they would have me bring all the six Horses with the Coach, No they said, a pair would serve to the Play-House, and the other four should stand at the Pounds end. So I went accordingly to the place appointed, over against the *Horschoe-Tavern* in *Drury-Lane*, and a Foot-Man came, and Mr. Hill and he bid me drive down lower. So I drove to my Lord of *Clares Door*, or thereabouts; and there was some Souldiers that would have had me go in, and Smoak and Drink with them: I told them, I did never Smoak, and I did not care for Drinking any thing at that time. With that, my Lord Mobun and Mr. Hill came into the Coach, and as they bid me, I carryed them into *Norfolk Street*, below the *Watch-House* that stood there; they bid me turn about, and stand there; and then they went for a little time to the *White-Horse Tavern*, so I did turn about, and staid as they bid me, and they tarried a pretty while before they came again, and then they bid me drive back to the place from whence I came, so I Drove into *Drury Lane*, and they bid me stop next to my Lord *Craven's House*, this was about Ten a Clock, and it being so late, I went Home, and sent a Postillion down, to take care of the Coach, so that what passed afterwards, I cannot tell.

Lord High Steward. What Day or Night, was all this you speak of.

Dixon. Truly my Lord, I cannot tell what Day it was, it was in *December*, as I take it, the 9th. and it was *Friday* I believe, I do not know justly.

Lord High Steward. Did you hear of the Death of Mr. Mountford?

Dixon. Yes, I did.

Lord High Steward. Was it the same Day that you heard Mr. Mountford was killed.

Dixon. No, I did not hear it till the next Morning.

Mr. Attorney General. You say, you went with my Lord Mobun and Mr. Hill into *Norfolk Street*, and there you stayed for them, whilst they went elsewhere.

Dixon. Yes, I did so.

Mr. Attorney General. Do you know to what Houses they went?

Dixon. They went to the *White-Horse Tavern*, to the hithermost House on this side the *Strand*, and they went below to a Door on this side of a House that is not finished yet.

Mr. Attorney General. Did you hear them use any Expressions there.

Dixon. I heard Hill say to my Lord Mobun, I think there is a Man and a Maid talking, it was at the Corner House; saith Hill, we are Betrayed, Damme saith he, my Lord, let us go and Thresh him.

Mr. Attorney General. What did they do then?

Dixon. I did see them do nothing.

Mr. Attorney General. Whither did you carry them from thence?

Dixon. To the place from whence they came, in *Drury Lane*.

Lord High Steward. Will your Lordship say any thing to this man?

Lord Mobun. I desire he may be asked, whether he had not Orders to go out of Town with us, as soon as Mrs. *Bracegirdle* was put into the Coach.

Dixon. If it please you Sir, I had Order thus, that when we were to go out of Town, I must Drive down into the *Strand*, and then round about any way that was readiest and clearest to get to the Pound, that Order I had, and no other Order I had.

Lord High Steward. Who is your next Witness?

Mr. Attorney General. My Lords, the next Witness we shall call, will give you an Account what was done in *Drury Lane*, upon their endeavouring to carry her away, and for that we have here Mrs. *Bracegirdle* her self.

Lord High Steward. What is this Gentlewomans Name?

Mr. Attorney General. Mrs. *Ann Bracegirdle*.

Then she was Sworn.

Mr. Att. Gen. Mrs. *Bracegirdle*, Pray give my Lords an Account of the whole of your Knowledge of the Attempt that was made upon you in *Drury Lane*, and what followed upon it.

Mrs.

Mrs. Bracegirdle. My Lord, I was in *Prince's-Street* at Supper at *Mr. Page's*, and at ten a Clock at Night, *Mr. Page* went Home with me; and coming down *Drury-Lane*, there stood a Coach by my Lord *Craven's* Door, and the Boot of the Coach was down, and a great many men stood by it; and just as I came to the Place where the Coach stood, two Soldiers came and pulled me from *Mr. Page*, and four or five more came up to them, and they knocked my Mother down almost, for my Mother and my Brother were with me. My Mother recovered, and came and hung about my Neck, so that they could not get me into the Coach, and *Mr. Page* went to call Company to rescue me. Then *Mr. Hill* came with his Sword drawn, and struck at *Mr. Page* and my Mother; and when they could not get me into the Coach, because Company came in, he said he would see me Home, and he led me by one Hand, and my Mother by the other. And when we came Home, he pulled *Mr. Page* by the Sleeve, and said, Sir, I would speak with you.

Mr. Att. Gen. Pray *Mrs. Bracegirdle*, did you see any Body in the Coach when they pulled you to it?

Mrs. Bracegirdle. Yes, my Lord *Mobun* was in the Coach; when they pulled me to the Coach, I saw my Lord *Mobun* in the Coach. And when we came Home, *Hill* pulled *Mr. Page* by the Sleeve, and said he would speak with him. As they led me along *Drury Lane*, my Lord *Mobun* came out of the Coach, and followed us, and all the Soldiers followed them, but they were dismissed, and, as I said, when we came to our Lodging, then *Hill* pulled *Mr. Page* by the Sleeve, and said, he would speak with him. Saith *Mr. Page*, *Mr. Hill*, another time will do, to Morrow will serve; with that, when I was within Doors, *Mr. Page* was pulled into the House, and *Mr. Hill* walked up and down in the Street with his Sword drawn. He had his Sword drawn when he came along with me.

Mr. Att. Gen. Did you observe him to say any thing whilst he was with you?

Mrs. Bracegirdle. As I was going down the Hill, he said, as he led me, he would be revenged.

Mr. Att. Gen. Did he name of whom he would be revenged?

Mrs. Bracegirdle. He did not name of whom then, but when I was in the House, several Persons went to the Door, and afterwards *Mrs. Brown* went to the Door, and spoke to them, and asked them what they staid and walked there for; at last, they said, they staid to be revenged of *Mr. Mounsford*, and then *Mrs. Brown* came in to me, and told me of it.

Lord High Steward. Who said that?

Mrs. Bracegirdle. *Mr. Hill*.

Mr. Att. General. Were my Lord *Mobun* and *Mr. Hill* both together when that was said, that they staid to be revenged of *Mr. Mounsford*?

Mrs. Bracegirdle. Yes they were. And when *Mrs. Brown* came in and told me, I sent my Brother and the Maid, and all the People we could, out of the House to *Mrs. Mounsford*, to desire her to send, if she knew where her Husband was, to tell him of it, and she did. And when they came in a Doors again, I went to the Door, and the Doors were shut, and I listened to hear if they were there still, and my Lord *Mobun* and *Mr. Hill* were walking up and down the Street; and by and by, the Watch came up to them, and when the Watch came, they said, Gentlemen, Why do you walk with your Swords drawn? Says my Lord *Mobun*, I am a Peer of England, touch me if you dare.

Lord High Steward. Repeat that again, for I could not well hear you: Do you speak of what you heard from *Mrs. Brown*, or what you observed your self?

Mrs. Bracegirdle. My Lord, I was within Doors, but I was listening at the Door, and heard this my self; they came up to them, and said, Gentlemen, Why do you walk with your Swords drawn?

Lord High Steward. Who asked that Question?

Mrs. Bracegirdle. The Watch; and; says my Lord *Mobun*, I am a Peer of England, touch me if you dare. Then the Watch left them, and they went away, and a little after there was a Cry of Murder, and that is all that I know, my Lord.

Lord Mobun. My Lord, I desire this Witness may be asked, how long after this Passage that she speaketh of, was it that she heard Murder cryed in the Street.

Lord High Steward. You hear the Question, *Mrs. Bracegirdle*, What say you to it?

Mrs. Bracegirdle. My Lord, I believe it was about a quarter of an Hour after, to the best of my Memory.

Lord High Steward. What do you mean, a quarter of an Hour after the Watch asked the Question?

Mrs. Bracegirdle. Yes, my Lord.

Then the Earl of Mulgrave stood up.

Lord High Steward. My Lord *Mulgrave*.

E. of Mulgrave. My Lord, I desire to ask this Witness a question. If I heard her aright, I think she said, they threaten'd to be Revenged of *Mr. Mounsford*, I desire to know of her, whether my Lord *Mobun* did threaten him.

Mrs.

Mrs. *Bracegirdle*. I do not know indeed; but when Mrs. *Browne* asked them what they staid there for? They said to be Revenged of Mr. *Mountford*. I did not hear them my self, but Mrs. *Browne* came in and told me so.

Mr. *Att. Gen.* Mrs. *Bracegirdle*, I think, if I did not mistake, you said, when the Watch came up, they asked them, why their Swords were drawn?

Mrs. *Bracegirdle*. Yes, and my Lord *Mobun* made answer, he was a Peer of England, and bid them touch him if they durst, and they went away.

Mr. *Att. Gen.* My Lord, the next Witness that we call, shall be Mr. *Gawen Page*, at whose House Mrs. *Bracegirdle* Supped that Night.

[*He was Sworn.*]

Mr. *Att. Gen.* Mr. *Page*, I suppose you remember the Night, when Mrs. *Bracegirdle* Supped at your House.

Mr. *Page*. Yes, my Lord.

Mr. *Att. Gen.* I pray give an account of your whole Knowledge about this Matter, What happen'd that Night.

Mr. *Page*. About Ten a Clock at Night, on Friday the Ninth of December last, going down *Drury-Lane* with Mrs. *Bracegirdle*, whom I Led just against my Lord *Craven's* House.

L. H. *Steward*. Pray Sir, speak out, and tell us what time it was.

Mr. *Page*. About Ten a Clock at Night, on Friday the Ninth of December last, going down *Drury-Lane*, and leading Mrs. *Bracegirdle*, right against my Lord *Craven's* Door, stood a Coach, where two Soldiers pressed in between me and Mrs. *Bracegirdle*, and parted us: I asked what that was for? But they took hold of Mrs. *Bracegirdle*, and immediately they would have forced her into the Coach; Capt. *Hill*, whom I saw there with his Sword drawn, made several Blows at me.

L. H. *Steward*. Who would have forced her into the Coach?

Mr. *Page*. The Soldiers would.

Mr. *Att. Gen.* Pray go on Sir, what follow'd after that?

Mr. *Page*. I say, Capt. *Hill* made several Blows at me, and Cry'd you Villain, Stand. I received several of them upon my Cane, but there was none that hurt me; then I got Help, and they were prevented of carrying Mrs. *Bracegirdle* away. My Lord *Mobun* was in the Coach; I saw him in the Coach.

Mr. *Att. Gen.* Did you see any Arms in the Coach?

Mr. *Page*. I saw no Arms, but I saw a Bundle in the Coach, tho I could not tell what it was; and there was one in the Coach, that I saw was my Lord *Mobun*. So when we had got Help, we went down the Lane to Convey her home, and Capt. *Hill* was with us, and my Lord *Mobun* followed at a distance. Capt. *Hill* said to the Soldiers, *Be gone, I have nothing more to do with you now.* When we came to the House and Mrs. *Bracegirdle* was entering in, Captain *Hill* pull'd me by the Sleeve, and said he would speak with me. Said I, to Night is not a fit time, to Morrow is better, therefore pray stay till to Morrow Morning. But said he, *God Damme, you will not go Home to Night.*

L. H. *Steward*. You speak so low, that I cannot tell what you say; I did not hear that last that you said.

Mr. *Page*. My Lord, I say, when Captain *Hill* pull'd me by the Sleeve, and said he would speak with me, I told him, that Night was not a fit time, to Morrow would do better: Well, saith he, *To Morrow then; but, God Damn me, you will not go out to Night* I went in a Doors, and there my Lord *Mobun* and he staid for an Hour and a half, as I was told; I saw them not my self: But Mrs. *Browne* came in and said, that they said, they waited to be Revenged.

Mr. *Att. Gen.* Whom did they mean, your self that they would be Revenged of?

Mr. *Page*. Mrs. *Browne* said, they waited for Mr. *Mountford*.

Mr. *Att. Gen.* Did you continue in that House till after the Murder was committed?

Mr. *Page*. Yes Sir, I did.

L. H. *Steward*. How long after you came into the House was the Fact done?

Mr. *Page*. About an Hour and an half.

L. H. *Steward*. Did you your self hear or observe any thing to be said or done, from the time you came into the House, to the time the Fact was committed?

Mr. *Page*. No, my Lord, I was in the Back Room of the House,

Mr. *Att. Gen.* Pray, Mr. *Page*, did you see Mr. *Mountford* after he was Wounded?

Mr. *Page*. Yes, I did.

Mr. *Att. Gen.* Then give my Lords an account what passed at that Visit.

E

Mr.

Mr. Page. Upon the outcry of Murder, I came out into the Street, where I found my Lord *Mobun* just Surrendring himself to the Constable; and immediately I went to *Mr. Mountford's* House, and I found him lying all along in his Blood upon the Floor; he seeing me, desired me to lift him up, which I did, and thinking he had been Dying, I asked him whether he knew me. He said Yes. Said I to him, Had you time to draw your Sword in your Defence? He said, *He was barbarously run Through before he could Draw it.*

Mr. Att. Gen. Is this all you have to say, Sir?

Mr. Page. Yes.

L. H. Steward. Will your Lordship ask this Witness any Questions?

L. Mobun. My Lord, I desire he may be asked whether my Sword was Drawn when I Surrendred my self to the Constable.

Mr. Page. No my Lord, your Sword was in the Scabbard when you Surrendred your self, but I cannot say that your Sword was Drawn before, or not.

Mr. Att. Gen. The next Witness that we desire to call, is *Mrs. Page.*

[*She was Sworn.*

L. H. Steward. What is the Name of this Witness?

Mr. Att. Gen. *Mrs. Mary Page.* Pray *Mrs. Page*, do you remember the Night when *Mrs. Bracegirdle* Supped at your House, and *Mr. Mountford* was Killed? Acquaint my Lords with all you did observe that Night.

Mrs. Page. *Mrs. Bracegirdle* Supped at my Lodging, and my Husband went home with her, and staying something longer than ordinary, I sent my Servant to know what was the reason of it: He brought me word back, that my Husband had like to have been Murdered, and *Mrs. Bracegirdle* carried away. With that I went down my self towards *Mrs. Bracegirdle's* Lodgings, and there I found my Lord *Mobun* and *Mr. Hill* walking, *Mr. Hill* with his Sword Drawn before *Mrs. Bracegirdle's* Door; my Lord *Mobun's* not. So I went in, into the House; and after I had staid a while there, *Mrs. Browne* came out to them, and asked them why they staid there? They made answer, they staid for *Mr. Mountford.*

Mr. Att. Gen. Who made that Answer?

Mrs. Page. *Mr. Hill.*

Mr. Att. Gen. Who was with *Mr. Hill* at that time?

Mrs. Page. My Lord *Mobun.*

Mr. Att. Gen. Was there any body besides those two, that you observed?

Mrs. Page. No, there was no body else that I saw.

Mr. Att. Gen. Were their Swords Drawn?

Mrs. Page. *Mr. Hill's* then was, my Lord *Mobun's* at that present was not: But *Mrs. Bracegirdle* hearing that they waited for *Mr. Mountford*, desired me to go over to *Mrs. Mountford's* House, and speak to her to send to her Husband, and desire him to keep where he was, or come home with a good Guard, whilst I was telling *Mrs. Mountford* what I was desired to tell her—— But I should have told your Lordships, that when I came out to go to *Mrs. Mountford*, my Lord *Mobun* had then his Sword Drawn.

Mr. Att. Gen. Were they there when you went out of *Mrs. Bracegirdle's* Lodgings?

Mrs. Page. Yes, they were.

Mr. Att. Gen. And are you sure, that at that time when you went out of *Mrs. Bracegirdle's* House, my Lord *Mobun* had his Sword Drawn?

Mrs. Page. I am sure of it, that when I went out, my Lord *Mobun* had then his Sword Drawn; that was the Second time.

L. H. Steward. Out of whose House was that you went?

Mrs. Page. Out of *Mrs. Bracegirdle's* Lodgings.

L. H. Steward. Where were they when you saw his Sword Drawn?

Mrs. Page. They were walking before *Mrs. Bracegirdle's* Door, from one end of the Street to the other.

Mr. Att. Gen. What Street is that?

Mrs. Page. Howard-Street.

Mr. Att. Gen. Pray describe to my Lords that Street.

Mrs. Page. They that stand in that Street, can see who goeth down to *Mr. Mountford's* House, and who goeth up *Sirry-Street.*

Mr. Att. Gen. Well now go on.

Mrs.

Mrs. Page. Whilst I was desiring Mrs. Mountford to send away to her Husband, I heard Murder cry'd out; immediately I open'd Mr. Mountford's Door, and he came in, and fell with his Arms round about my Neck to support himself, I suppose, and he said, Hill had Murder'd him. I helped him as far as the Parlor Door, and there down he fell. I went up the Street and called out Murder, and my Lord Mobun came to me, and bid me take notice, he had no hand in the Murder, for his Sword was not Drawn. I told him, I could not tell that, for to my knowledge he had been in Mr. Hill's Company with his naked Sword just before.

Mr. Att. Gen. Call Mrs. Browne.

L. H. Steward. You have nothing to say to that Witness my Lord, have you?

L. Mobun. No, my Lord.

Mr. Att. Gen. Is this all you have to say, Mrs. Page?

Mrs. Page. After this, my Lord Mobun resign'd himself up to the Constable, the Constable standing by me, I bid him Secure my Lord Mobun, which he did.

L. Mobun. My Lord, I desire to ask this Witness, whether I Surrendred my self, or made Opposition, or offered to run away?

Mrs. Page. No my Lord, the Constable laid hold on you.

L. H. Steward. What Answer do you make to my Lord's Question?

Mrs. Page. I say, my Lord, the Constable laid hold upon my Lord Mobun.

L. Mobun. I desire to ask her, whether I did not Surrender my self?

Mrs. Page. Not till I had desired the Constable to Secure your Lordship.

L. Mobun. Did I make any Opposition, or offer to run away?

Mrs. Page. No, for the Constable presently took hold of your Lordship.

L. Mobun. I desire she may be asked whether Hill Run away.

Mrs. Page. That I know not; I suppose he was gone away out of the Street before I came forth.

Mr. Att. Gen. Swear Mrs. Browne.

Which was done.

Mr. Att. Gen. Mrs. Browne, you are upon your Oath, pray declare to my Lords what you know happen'd upon that Night that Mr. Mountford was Killed.

Mrs. Browne. If it please your Lordships, when Mrs. Bracegirdle came Home, I found her Crying? I asked her what was the matter? She said, my Lord Mobun and Mr. Hill, had run her into a Coach, with six or seven Soldiers, and lifted her into the Coach, and she said they were at the Door. Upon which, I went to the Door, and saw my Lord Mobun and Mr. Hill walking along. Said I, are you the Gentlemen that have used Mrs. Bracegirdle in this manner? My Lord Mobun answered, Madam, said he, I Protected her; if it had not been for me, the Rabble would have torn her a piece; for if we had had a mind to carry her away, we had six or seven Pistols Charged in the Coach, and could easily have suppressed the Tumult.

L. H. Steward. I do not hear what this Witness saith, she speaketh so low.

Mrs. Browne. My Lord Mobun said, they had Six or Seven Pistols in the Coach, and could easily have suppressed the Rabble, if they would have carried her away; but he had no Design upon her for his own part, but only to serve his Friend; and that Mr. Hill's design was to take her out of Town, and keep her a Week, and see if he could perswade her to Marry him; and saith Mr. Hill, I shall light on this Mountford. Why, said I to him, What hurt hath Mr. Mountford done you? Saith he, I have been Abused, and I will be Revenged.

L. H. Steward. That was Hill that said so.

Mrs. Browne. Yes. So I went, and told Mrs. Mountford of it.

Mr. Att. Gen. Pray acquaint my Lords what my Lord Mobun said to you about this Matter.

Mrs. Browne. My Lord Mobun said, he protected her, for if it had not been for him, the Mob had torn her in pieces; but if they had had a mind to carry her off, they could easily have suppressed the Mob, for they had six or seven Pistols in the Coach: But saith my Lord, I had no design upon her my self, but only to serve my Friend. So saith Mr. Hill, I shall light upon this Mountford. Why, said I, what hurt hath Mr. Mountford done you? Saith he, I have been Abused, and I will have my Revenge. So I went and told Mrs. Mountford of it. About half an Hour after, or more, Mr. Mountford came down, and when he came down, I saw him a little before he came to them, and went to him, and would fain have spoke to him, but he would not stay to let me speak what I had to say to him, but going on, presently he met my Lord Mobun. Saith he, Your Humble Servant, my Lord. Saith my Lord again, Your Servant Mr. Mountford. Saith my Lord, I have a great Respect for you, Mr. Mountford, and would have no Difference between us; but there is a thing fallen out between Mr. Hill and Mrs. Brace-

Bracegirdle. Saith Mr. Mountford, My Lord, has my Wife disoblighd your Lordship? if she has, she shall ask your Pardon; but as for Mrs. Bracegirdle, she is no concern of mine; and I hope your Lordship will not vindicate such an ill Man as Mr. Hill in such a matter as this. Upon that I heard Mr. Hill bid Mr. Mountford draw, Mr. Mountford said, that I will; and drew his Sword; but whether he received his Wound before he drew his Sword, or after, I cannot tell.

L. H. Steward. Speak that last again.

Mrs. Browne. Mr. Mountford and my Lord met; saith Mr. Mountford, your Servant, my Lord; saith my Lord, Your Servant, Mr. Mountford, I have a great respect for you, and would have no difference be between us; but here has been a thing fallen out between Mrs. Bracegirdle and Mr. Hill; saith Mr. Mountford presently again, Has my Wife disoblighd your Lordship? If she has, she shall ask your Pardon. But Mrs. Bracegirdle is no concern of mine: I know nothing of this matter, I come here by accident;

Mr. Att. Gen. Who said they came there by accident?

Mrs. Browne. Mr. Mountford said, I know nothing of this matter, I come here by accident. But, I hope, your Lordship will not vindicate Hill in such Actions as these are: Upon that, I heard Mr. Hill bid Mr. Mountford draw, Mr. Mountford said he would, and drew his Sword; but whether he receiv'd his Wound before or after, I cannot tell; it was in the Night.

Then the Lord Godolphin stood up.

L. H. Steward. My Lord Godolphin.

L. Godolphin. My Lord Steward, I desire this Witness may be asked, whether my Lord Mobun's Sword was drawn when he talked with Mountford, because the Council opened it before, that the Watch came to them, and saw them with their Swords drawn when they were walking in the Street.

L. H. Steward. Mrs. you heard my Lord's Question: Was my Lord Mobun's Sword drawn whilst he talked with Mountford, or no?

Mrs. Browne. I do not remember I did see my Lord Mobun's Sword drawn.

Mr. Att. Gen. Were they near together?

Mrs. Browne. They were near together.

L. Mobun. I desire she may be asked whether I went up the Street to meet Mr. Mountford, or he came down to me?

L. H. Steward. You heard the Question, Mistress, what say you?

Mrs. Browne. Mr. Mountford came down to him.

L. Mobun. I desire she may be asked whether she did not go to hinder Mr. Mountford from coming that way?

Mrs. Browne. Yes, I did go to speak to him, but he did not hear me speak, or did not hearken to me; I took him by the Hand, and told him I would speak with him, but he did not hear me, but went on.

Mr. Att. Gen. You did not tell him upon what account you would have spoke with him?

Mrs. Browne. No, I had not time.

L. Mobun. I desire she may be asked, whether Mr. Mountford's Sword was within his Arm, or by his Side.

Mrs. Browne. I believe it was by his Side.

L. Mobun. I desire she may be asked one Question more, whether he could not have went home, without coming to Mr. Hill and me?

Mrs. Browne. He did come out of his way, his way was not by my House; he did come down the Street towards them.

L. Mobun. I desire your Lordships to take notice, that he came out of his way to me. I desire to aske her: Did he come as if he was going to his own House or yours?

Mrs. Browne. As if he was coming to mine.

L. Mobun. I desire to ask her, whether I had any hand in killing Mr. Mountford, or went to hold him, or meddled with him?

Mrs. Browne. Not that I did see.

L. H. Steward. Have you any more to say to this Witness?

Mr. Att. Gen. No, my Lord.

L. H. Steward. Nor your Lordship?

L. Mobun. No, my Lord.

Mr. Att. Gen. Then the next Witness we desire to call, is, Richard Row.

[Who was Sworn.

Mr. Att. Gen. Richard Row, where do you live?

Row. In Surry-street.

L. H. Steward. Where doth he Live saith he?

Mr.

Mr. Att. Gen. In *Surry-street*, my Lord. Pray how near is that to the Place where Mr. Mountford was Killed?

Row. About ten or twelve Pole.

Mr. Att. Gen. Did you observe my Lord Mobun and Mr. Hill that Night, and where were they?

Row. All that I can say to the matter in that Case is, I was in my own House about a quarter after Ten a Clock, and I heard a noise in the Street, and I went out, and saw two Gentlemen and two Lads about the middle of the Channel; one of the Lads had one of the Gentlemen by the Arm, just by the Channel, and said, *Pray my Lord, Good my Lord, don't do it, alter your Resolution.* There was an Answer made, that they would be Revenged that Night, or to Morrow.

Mr. Att. Gen. Do you know who the Boy was that used that Expression?

Row. No, my Lord, it was very Dark.

Mr. Att. Gen. Do you not know neither who returned the Answer?

Row. No indeed.

Mr. Att. Gen. But you are sure you heard those words pass?

Row. Yes indeed, and I went to the Door afterwards, whilst they went to the upper end of the Street and returned again; and I saw Captain Hill's Boy following him. My Lord, I knew Capt. Hill, tho he was not in the Cloaths he formerly used to come to my House in, and the Boy I knew to be his Boy.

Mr. Att. Gen. Were those Persons together that you heard speaking so?

Row. Yes, all four together, in a Confusion they seemed to be, for they were Pushing to and agen, and the Boy had hold of one of the Gentlemen's Arms when he bid him alter his Resolution.

Mr. Att. Gen. Repeat those Words again that you heard him say.

Row. *Pray my Lord, good my Lord, do not do it, alter your Resolution.*

L. H. Steward. Has your Lordship any thing to ask this Witness?

L. Mobun. No, my Lord.

Row. I spoke of this same afterwards, and so they have brought me here to give Evidence: That is all that I can say. I cannot Swear to my Lord Mobun, that he was one, I do not know that ever I saw him to my knowledge in my Life.

E. of Mulgrave. My Lord Steward, I desire he may be asked, whether he knoweth who that Boy was that made that Answer.

Row. There was no answer made by any Boy, but begging and praying, *That my Lord would not do it.*

E. of Mulgrave. Do you know who that Boy was?

Row. No, I do not know what Boy it was. But when I heard Mr. Mountford was Killed, and my Lord Mobun was concerned, I told what I had heard and seen, and so they bring me here to Evidence it. That is all I can say to the matter.

Mr. Att. Gen. My Lord, we desire next to call some of the Watch, and shall begin with Merry.

[Who was Sworn.

L. H. Steward. What is his Name?

Mr. Att. Gen. William Merry. Mr. Merry, I think you are Beadle of the Parish.

Merry. Yes, I am.

Mr. Att. Gen. Pray acquaint my Lords what you observed that Night Mr. Mountford was Killed, when you saw my Lord Mobun and Mr. Hill, the first time and the second time, when my Lord Mobun was Taken.

Merry. When I first came down the Street, walking the Rounds between Eleven and Twelve a Clock, as I turned at the Corner out of *Surry-street* into *Howard-street*, I saw my Lord Mobun and Capt. Hill Walking, that is, upon the Paved Stones; my Lord was walking towards me, and I asked, Who comes there? Saith my Lord, a Friend. Said I, What is the meaning of your Swords being Drawn? Return your Swords, and stand off. With that, he returned his Sword immediately. Saith he, *I am a Peer of the Land; here, will you have my Sword?* and he profered me his Sword; but the Constable was not there then, and I did not take his Sword; but, said I, God Bless your Honor my Lord, I know not what you are, but I hope you are doing no harm; No, saith he. With that, the Constable came immediately, and he profered the same to him; there were two Candles in some Maids, or Womans hands at a Door hard by, and I went to ask them if they knew the meaning of it; and there being a Neighbours Man leaning with a Bottle and a Glass against the Wall, whom I knew. I think they told me one of them had a Sweet-heart there; and my Lord said, he was drinking a Lady's Health, and as soon as his Bottle was out, he would be gone. That is all I heard of the matter.

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Mr.

M. Att. Gen. Was Mr. Hill there?

Merry. Yes, he was.

M. Att. Gen. Was his Sword Drawn?

Merry. Yes, his Sword was drawn, and I asked what made that Gentleman with his Sword Drawn? and my Lord Mobun said, he had lost his Scabbard; but seeing this Neighbour's Man stand there, I went to the House.

Mr. Att. Gen. Were both their Swords drawn at first?

Merry Both their Swords were Drawn when I came first into the Street; but my Lord put up his Sword, and the other continued Drawn, by reason as they said, he had lost his Scabbard. And so seeing, as I said, my Neighbour's Man standing there, we went to that House to enquire if they knew what their Business was; we were not got into the House, I am sure not a Stone's cast within the House, but Murder was cry'd out, and we came back again, and my Master being nimbler of Foot than I, because he was a younger Man, came first into the Place, and Seized My Lord before I came; how the Seizing was I do not know.

Mr. Att. Gen. Our next Witness is Thomas Fennel.

[Who was Sworn.

M. Att. Gen. Fennel, you was one of the Watch that night when Mr. Mountford was Killed.

Fennel. Yes, Sir.

Mr. Att. Gen. Give my Lords an account what you observed that Night, in relation to my Lord Mobun and Mr. Hill.

Fennel. The Constable and his Watch going the Rounds, divided themselves into two parts; I went down Surry-Street with one Party; the Constable he went down Strand-Lane with the other Party. We were four or five that came down Surry-Street, and when we came down, my Lord Mobun and Capt. Hill's Swords were both Drawn; my Lord Mobun put up his Sword just as we came down.

L. H. Steward. Speak out, Man, that my Lords may all hear you.

Fennel. I say, the Constable and his Party went down Strand-Lane, and another Party down Surry-Street, four or five of us; and my Lord Mobun and Capt. Hill had both their Swords Drawn: When we came down, my Lord put up his Sword just as we came down, but the Constable not being come, I went and called him.

Mr. Att. Gen. You say both their Swords were Drawn when you came down.

Fennel. Yes, but my Lord put up his Sword just as we came down.

Mr. Att. Gen. What time of Night was that?

Fennel. It was between Eleven and Twelve.

Mr. Att. Gen. How long before the Murder was committed?

Fennel. A quarter of an Hour.

L. H. Steward. Do you not say, they put up their Swords as soon as you came down?

Fennel. My Lord Mobun put up his Sword, but Hill said he had never a Scabbard.

Mr. Att. Gen. Did you ask them why they had their Swords drawn at that time of Night?

Fennel. No, I went to call the Constable.

L. H. Steward. Have you any more to ask of this Witness?

Mr. Att. Gen. I have not my Lord.

L. H. Steward. Nor you my Lord?

L. Mobun. No, my Lord.

L. H. Steward. Pray go on then; whom do you produce next?

Mr. Att. Gen. Our next Witness is James Bassit

Who was Sworn.

Mr. Att. Gen. Were you one of the Watch that Night Mr. Mountford was Killed?

Bassit. Yes.

Mr. Att. Gen. Did you see my Lord Mobun and Capt. Hill that Night?

Bassit. Yes.

Mr. Att. Gen. Acquaint my Lords where it was, and in what manner you found them.

Bassit. In Howard-street; I came along with the Constable, and I walked before them that went down Surry-Street with my Lanthorn, and there was my Lord Mobun with his Sword Drawn, and Capt. Hill with his the like: We asked them, what they

they did there? They said they were drinking of a Bottle of Wine: *Hill* said to me, you may knock me down if you please: Nay, said I, we never use to knock any Gentlemen down, unless there be occasion; and then we went into *Norfolk-street* to the Tavern to examine what they were, and what they were doing; and in the mean time the Murder was done.

Mr. Att. Gen. Did you not ask them why their Swords were drawn?

Bassit. Yes, I did.

Mr. Att. Gen. What did they say?

Bassit. *Hill* made answer that he had lost his Scabbard.

Mr. Att. Gen. What said my Lord *Mobun*?

Bassit. My Lord *Mobun* had put up his Sword by that time we came up to him: That is all I can say to it.

L. H. Steward. If you have nothing more to ask him, call another.

L. Mobun. My Lord, I desire he may be asked whether he came with the Constable when I surrendered my self?

Bassit. Yes, and I took hold of your Sleeve, and you shook and quak'd and trembled, as if you would tear it to pieces.

L. Mobun. I desire he may be asked whether my Sword was in the Scabbard when I surrendered my self.

Bassit. Yes, it was, he surrendered it.

L. H. Steward. That was after the Murder was done.

Mr. Att. Gen. With your Lordship's Favour, I desire he may answer my Lord *Mobun*'s first Question again, so as to be heard by your Lordships; What was that you were saying when my Lord surrendered himself?

Bassit. I took him by the Arm when he surrendered himself up.

Mr. Att. Gen. What then?

Bassit. Then he quaked, and I had him away to the Round-House.

L. H. Steward. Hear my Question, you say you took him by the Sleeve, when he surrendered himself; what do you mean by that? is it that he had surrendered himself before you laid hold on him, or afterwards?

Bassit. I took hold of his Arm, when he surrendered himself.

L. H. Steward. But was it before he surrendered himself to the Constable?

Bassit. No, it was afterwards, my Lord; to have him away.

L. H. Steward. Then you did see him surrender himself to the Constable?

Bassit. Yes, my Lord.

Mr. Att. Gen. Then call Mr. *Charles Knowles*: But he did not appear.

L. H. Steward. Whom do you call next, Sir?

Mr. Att. Gen. My Lords, we call'd Mr. *Charles Knowles*; but they say, he is not come, therefore with your Lordships favour, we will call Mrs. *Brewer*.

[Who was sworn.

Mr. Att. Gen. Mrs. *Brewer*, I think, you live at the next Door to Mrs. *Bracegirdle*'s Lodging?

Mrs. Brewer. Yes, I do so.

Mr. Att. Gen. Pray give my Lords an account what you saw and heard that Night Mr. *Mountford* was kill'd,

Mrs. Brewer. I was at Mrs. *Bracegirdle*'s House, and I went to the Door with them; and just as I went to the Door, my Lord *Mobun* came up to me; and just as he came to the Door, Mr. *Mountford* came down the Street, and my Lord went to him, and embraced him, and said, Mr. *Mountford*, Your humble Servant, I am glad to see you; Who is this said Mr. *Mountford*, my Lord *Mobun*? Yes said my Lord. What makes your Lordship here at this time a night, saith Mr. *Mountford*? Saith my Lord again, I suppose Mr. *Mountford* you was sent for; sent for, for what saith he? You have heard of the business of Mrs. *Bracegirdle*, I suppose, saith my Lord: No my Lord, saith he, I come by chance.

Mr. Att. Gen. Who said that?

Mrs. Brewer. Mr. *Mountford*, Sir.

Mr. Att. Gen. Well, go on and speak aloud.

Mrs. Brewer. My Lord, Mr. *Mountford*.——And there she hesitated, and seemed to be in a Confusion.

Mr. Att. Gen. She is not used to such publick Examinations: If your Lordships will please to allow her to begin again, because she is in some Confusion, she will be the better able to give you what account she can of this matter.

L. H. Steward. Let her recollect her self, and begin again.

Mrs.

Mrs. Brewer. When Mr. Mountford came down the Street, I stood at the Door, and my Lord Mobun was come to the Door, and my Lord Mobun went to him and said, Mr. Mountford, your Humble Servant, I am glad to see you, and Embraced him. Saith Mr. Mountford, Who is this, my Lord Mobun? Yes, saith he, it is. What maketh your Lordship here at this time of night? saith my Lord Mobun, I suppose you are sent for Mr. Mountford. No indeed, said he, I came by chance. Saith my Lord, You have heard of the Business of Mrs. Bracegirdle. With that, after he had said this, Mr. Hill cometh up, and saith, Pray my Lord, hold your Tongue, this is not a convenient time to discourse this Business; and would have drawn my Lord away. Saith Mr. Mountford, I am very sorry my Lord, to see that your Lordship should assist Capt. Hill in so ill an Action as this; pray, let me desire your Lordship to forbear. Upon this, as soon as he had said so, Mr. Hill came up and struck Mr. Mountford a Box on the Ear. Saith Mr. Mountford, Damme, what's that for? And with that, he whipped out his Sword and made a Pass at him, and I turned about and cry'd out Murder, Murder.

Mr. Att. Gen. But you say, you saw Hill draw his Sword, and make a Pass at him.

Mrs. Brewer. No, his Sword was drawn before; but he immediately after the Box on Ear, made a Pass at him, and I turned about and cry'd Murder.

Mr. Att. Gen. Had Mr. Mountford his Sword drawn at that time?

Mrs. Brewer. No, he had not.

Mr. Att. Gen. Are you sure he had not?

Mrs. Brewer. Yes, I am sure he had not, for as soon as he struck the Blow, he made a Pass at him.

Mr. Att. Gen. Was my Lord present at that time?

Mrs. Brewer. He stood just by on the Right-hand.

Mr. Att. Gen. How near to them?

Mr. Brewer. They were all close together as well as I could discern.

L. H. Steward. My Lord, have you any mind to ask this Witness any Questions?

L. Mobun. No, my Lord.

L. H. Steward. Have you done with her?

Mr. Att. Gen. Yes, my Lord. The next Witness we desire to call is Mr. Davenport, the Constable.

Who was Sworn.

L. H. Steward. Well, what saith this Man?

Davenport. The Ninth of December last at Night, as I was walking my Rounds between Eleven and Twelve a Clock, I divided my Watch into two Parts, one was to go down one Street, and the other another, and coming into Howard-Street, my Beadle happened to be there before me, and he had spied them as he told me, with their Swords drawn: As soon as I came up, my Lord Mobun very Civilly (his Sword not being then drawn) profered to Surrender his Sword to me, and said; he was a Peer of the Realm. I asked the other Man what he did with his Sword drawn? and he made answer, he had lost his Scabbard in Drury-lane. With that I found them very Civil, and I heard some Women at the Door, and they said they were Serenading them with a Bottle of Wine. There was a Drawer there that I knew, who formerly lived over-against me, and then lived at the White-Horse Tavern; so I left them, (finding them Civil) and went to the White-Horse Tavern, to examine what the Business was; they told me they were there a Drinking, and before I had spoken three words almost to the Man of the House, the Watch was called, and when we came, Mr. Hill had made his Escape, and so I Secured my Lord Mobun.

Mr. Att. Gen. What was the occasion of calling the Watch?

Davenport. They cried out Murder in the Street; So I took my Lord Mobun and carried him to the Round-House, where we kept him all Night.

Mr. Att. Gen. I think you say, when you first came, my Lord Mobun's Sword was not Drawn.

Davenport. It was put up then, but the Beadle said they were both Drawn before.

Mr. Att. Gen. You did not see them so soon as your Beadle.

Davenport. No, he was there before me.

Mr. Att. Gen. Then acquaint my Lord what was done; after you had Secured my Lord Mobun.

Davenport. After I had taken him, I carried him to the Round House, and when we came there, he asked me if Hill was Taken? I said no; and said to my Lord, this is a bad Misfortune you are happen'd into; and he said, God Damme, I am glad he is not Taken,

Taken, but I am sorry he has no more Money about him; I wish he had some of mine; and, I do not care a Farthing if I am Hang'd for him.

L. Mobun. My Lord, I desire he may be asked whether I offered to Fly?

Davenport. No, My Lord; I do not say you did, but you know my Lord, you said this to me.

L. H. Steward. But, Mr. *Davenport*, did not my Lord Surrender himself to you?

Davenport. Yes my Lord, mighty Civilly.

Mr. Att. Gen. Did my Lord say any thing to you about changing of Coats?

Davenport. He said, they had changed Coats three or four several times that day, and at the same time he had *Hill's* Coat upon his Back; and I asked him if he knew where *Hill's* Lodging was, and he told me; and I went to his Lodging with my Watch; and when we came there, we Searched the House, but did not find him there; but Captain *Hill's* Boy came in whilst we were there; so with that, I Seized the Boy and Searched him, and found Gunpowder and Ball about him; and I have *Hill's* Sword in the Court, and Mr. *Mountford's* and my Lord's.

L. Mobun. I desire he may be asked, whether *Mountford's* Sword was not broke in the Street, or whether he carried it away.

Davenport. I took up a piece, my self, and a Servant Maid took up another in the Street.

L. Mobun. I desire he may be asked, whether Mr. *Mountford's* Sword, when it was found, was in the Scabbard or not?

Davenport. No, it was not, I saw no Scabbard.

L. H. Steward. My Lord, you ask the Questions so fast, that we do not hear the Answers. Was not your first Question, whether *Mountford's* Sword was not Broken.

L. Mobun. Yes, my Lord.

L. H. Steward. What Answer giveth he to that?

Davenport. I do not know when it was Broken; but by the report of People that were there by, it was said, Mr. *Mountford* made a Pass, and at the first Pass, his Sword was Broken; and I went with a Lanthorn, and according as they said, I found a piece of a Sword, and I took it up my self.

L. H. Steward. What is your next Question, my Lord?

L. Mobun. I would ask him in what part of the Street he found the piece of the broken Sword.

L. H. Steward. You hear the Question, what say you?

Davenport. It was in the High-way in the Street.

L. H. Steward. My Lord *Mobun*, what do you mean by that Question?

L. Mobun. Whether it was in the middle of the Street towards *Surry-street*, or *Norfolk-street*, or near Mrs. *Bracegirdle's* Lodging; or upon the Pavement?

Davenport. It was overagainst the Door where you stood.

L. Mobun. How far might it be from where I stood? I desire he may be asked that.

L. H. Steward. You hear my Lord's Question, answer it.

Davenport. He was walking up and down when I came to Take him; and I took the piece of the Sword up in the Highway; he was walking on the Pavement, the Broad-stones.

L. H. Steward. Have you done with that Witness?

Mr. Att. Gen. Yes, my Lord. Is Mr. *Charles Knowles* come?

He did not appear.

Mr. Att. Gen. Then we desire to call Mr. *Bancroft* the Chirurgeon, and Mr. *Hunt*.

L. H. Steward. Who do you Examin first?

Mr. Att. Gen. We begin with Mr. *Bancroft*.

Who was Sworn.

Mr. Att. Gen. You attended upon Mr. *Mountford*, Mr. *Bancroft*, when he was Wounded.

Bancroft. Yes, My Lord.

Mr. Att. Gen. Pray acquaint my Lords what you know of this Matter.

Bancroft. My Lord, upon the Ninth of December last at Night, between the Hours of Twelve and One, I was Knocked up to go to Mr. *Mountford*, whose Servant came for me, and told me he was a dying of a Wound he had received. So I came to his House, and found him very desperately Wounded; it went in and out by his Back-bone, behind his left Side. I told him what he must expect, that he was a Dead Man. I attended him that Night, till about Four a Clock in the Morning, and then I took my leave of him, and went home: About Eight a Clock in the Morning I came thither again, and met Mr. *Hobbs* there, and he was of the same Opinion. He lived till about One, and then he Died.

Mr. Att. Gen. What Discourse had you with Mr. *Mountford*?

Mr. Bancroft. About Ten a Clock I was sent for by the Constable to come to *Hicks's* Hall, to be Examined there before the Justices; and being then with Mr. *Mountford*, and some Company being there, Mr. *Powell* (as I take it) was one; I said to Mr. *Mountford*,

I suppose where I am going, I shall be asked some Questions about what you may have said to me, you are now upon the brink of Eternity, and pray answer me truly, Who gave you this Wound, was it Mr. Hill, or my Lord Mobun? Said he, *My Lord Mobun offered me no Violence, but whilst I was talking with my Lord Mobun, Hill struck me with his Left Hand, and with his Right Hand run me through, before I could put my Hand to my Sword.*

Mr. Att. Gen. Did he tell you his Sword was Drawn?

Bancroft. He did not say, it was or not, but that Hill struck him with his left Hand, and at the same time run him Through with his right, before he could put his Hand to his Sword.

Mr. Att. Gen. Did he tell you my Lord Mobun's Sword was Drawn?

Bancroft. The words were these as near as I remember, My Lord Mobun offered me no Violence, but whilst I was talking with him, Hill with his left Hand struck me, and with his right run me Through, before I had time to put my Hand to my Sword.

Mr. Att. Gen. Did he tell you he had his Sword Drawn at all afterwards?

Bancroft. No, not a word of that, that I heard.

L. H. Steward. My Lord Mobun, have you any thing to say to him?

L. Mobun. No, my Lord.

Then Mr. William Hunt was Sworn.

Mr. Att. Gen. Mr. Hunt, you have heard what Mr. Bancroft was Examined to, Do you give an account what you know in relation to this Business.

Hunt. I was sent for to Mr. Mountford when he lay very ill; and I then asked him the manner of his being hurt, he said, *My Lord Mobun spoke to me, but Hill run me Through before my Sword was Drawn.* I asked him, whether he had time to draw his Sword? And he said, *Hill was in me and was through me, before my Sword was out;* and this he repeated again, about Twelve a Clock, about half an Hour before he Died the next day.

L. H. Steward. Will you ask him any thing else, Mr. Attorney?

Mr. Att. Gen. We shall ask him no more Questions, my Lord.

L. H. Steward. will you ask him any, my Lord Mobun?

L. Mobun. No, my Lord.

L. H. Steward. Then have you any more Witnesses?

Mr. Att. Gen. My Lord, I do not hear that Mr. Knowles is come yet; and if he be not come, we have no more Witnesses to Examine; if he does come, we must beg leave that we may Examine him.

L. H. Steward. You know that the Court cannot stay, for after you have done on both Sides, my Lords are to Withdraw, and we are not to Sit here in expectation of your Witnesses.

Mr. Att. Gen. My Lord, we do not expect that; If my Lord Mobun please to Examine any Witnesses on his part, and it happen that the Witness should come before my Lord has made an end, we hope your Lordships will favour us so far, as that we may Examine him.

L. H. Steward. My Lord Mobun, If you have any Witnesses to be Examined, now is your time to call them.

L. Mobun. I desire first, Mr. Hill's Foot-boy may be called.

L. H. Steward. Name him.

He came in to the Bar

L. Mobun. My Lords, if you please, I desire Mr. Brereton may be called first, because I would prove to your Lordships and shew you I had no Malice to Mr. Mountford.

L. H. Steward. I thought you had called that Boy first.

L. Mobun. That was a Mistake, my Lord, this Gentleman Mr. Brereton, I desire may be first Examined.

Mr. Brereton. My Lord, I know nothing as to this matter of Fact, for I had not seen my Lord Mobun of two or three days before.

L. H. Steward. What do you Examine this Witness to, my Lord?

L. Mobun. To shew that I had no Malice against Mr. Mountford, but spoke kindly of him several times.

Mr. Brereton. I had not seen my Lord Mobun for two or three days before this Fact was committed, and therefore can give no account of what happened then; but the Friday before, the Play of Alexander the Great was Acted, and my Lord Mobun and I were at the Play-house, and he and I went to Supper together, and we were talking of the Play, and he said it was a good Play, and commended several Parts in it, and particularly the Acting; and he commended Mr. Mountford's Acting extremely: I said, I thought he never Acted so well in his Life before; but my Lord spoke particularly very kind things of Mr. Mountford, that he thought him a very good Actor. I answered, as to

Comedy

Comedy he did use to act very well, but I thought he would never make so good a Tragedian as Mr. *Batterton*, or some others. But my Lord before this, had used to commend Mr. *Mountford* and speak kindly of him: And, he said, that several of the Players had been very rude to him, more than their Business did require of them; but Mr. *Mountford* had been more Civil than any of the rest. Upon this my Lord *Mobun* was pleased to ask me, whether I was Acquainted with Mr. *Mountford*; I told him I never was in his Company but once with Mr. *Bludworth*. Saith my Lord, I have a great mind to drink a Bottle of Wine with him. Said I, I do not think him worth you Acquaintance, but you may do what you will. Several things more my Lord said, and spoke more kindly of him than of any of the rest of the Players; but there was no time fixt for Drinking with him. Upon Tuesday after, my Lord *Mobun* came to my Lodgings, and told me Mr. *Mountford* had been very Civil to him the Night before at the Play-house, when the rest were very Rude to him; and he had a mind to drink a Bottle of Wine with him. Saith he, I am going about some Business to *Kensington*; but within a day or two you shall certainly hear of me, and we will fix a time for it, and if I do not like his Company, I will never trouble you nor my self more with it.

L. H. Steward. When was this Sir?

Mr. Brereton. This was the Tuesday before, the first Discourse was upon the Friday before.

Then the Boy was Examined.

L. Mobun. Was you along with me and Mr. *Hill*, that Night Mr. *Mountford* was Killed?

L. H. Steward. My Lord, you must propose your Questions to me, and I will ask them.

Mr. Att. Gen. I desire to know what the Boy's Name is, and who he is.

L. Mobun. His Name is *Thomas Lake*, and he was Mr. *Hill's* Foot-boy

L. H. Steward. What do you ask him, My Lord?

L. Mobun. Pray, my Lord, ask him, if he was with Mr. *Hill* and me that Night that Mr. *Mountford* was Killed.

L. H. Steward. You hear the Question; What say you to it?

Boy. Yes, my Lord.

L. H. Steward. I do not hear you what you say.

Boy. I was with them my Lord, and all I heard was, they had a design to take away the Woman, Mrs. *Bracegirdle*, and they had provided Night-Cloaths and a Coach for her, to go to *Totteridge*, which was the Place where they design'd to carry her.

L. H. Steward. I do not hear one word this Boy saith.

L. Mobun. My Lord, shall I repeat to your Lordship what the Boy saith?

Lords. No, No, No.

L. H. Steward. No, my Lord, you are not to repeat what your own Witness saith.

Boy. They had a design to carry away the Woman, Mrs. *Bracegirdle*.

L. H. Steward. I do not hear one Word. That Boy can speak out if he pleaseth; I warrant him, he would make Noise enough if he was in another Place. Speak out, that my Lords may all hear you.

Boy. I cannot speak any louder than I do; I say, they had a design to carry away the Woman.

L. H. Steward. I may as well be at the other end of the Town as in this Place, as for hearing what he saith. Some body should repeat what he saith.

L. Mobun. If your Lordship please to allow it, that one of the Officers of the Court may come down to the Bar, and repeat from his Mouth to the Court what he saith.

Lords. Ay, Ay. *L. H. Steward.* Mr. *Walker*, Then do you go and stand by him, and tell us what he saith.

Mr. *Walker* the Clerk, went and stood by the Boy at the Bar, and repeated his Evidence aloud.

Mr. Walker. My Lord, he saith, they had a design to take away the Woman, and they had Night-Cloaths in the Coach for the Woman to put on, and they enquired at the Womans Lodging where she was, and there they were told that she was at Mr. *Page's* at Supper, and her Brother came to the *Horshee-Tavern* and Drank with them, and he was to go to tell them when she came out, and which way she was to go Home; and there was a Man that was to give Notice, and they went down before her, and the Coach stood almost at the lower end of *Drury-lane*, where there were some Soldiers to put her in, and the Soldiers went and took hold of her.

L. H. Steward. Is this my Lord *Mobun's* Witness?

Mr. Walker. Yes, my Lord; and he saith, when they went to take hold of her to put her in, Mr. *Page* Strugled with them, and would not let them, and she cry'd out, and was very much troubled at it.

L. Mobun.

L. Mobun. My Lord, I desire he may be asked whether he was in *Howard-street* when *Mr. Mountford* was Wounded, and what passed in *Howard-street* before *Mr. Mountford* was Wounded?

Mr. Walker. He saith, he was in *Howard-street*, and saw *Mr. Mountford* come down in *Norfolk-street* towards them, and turn into *Howard-street*, but out of his way to his own House; he saith, he came down, and there met my Lord *Mobun* and his Master, *Mr. Mountford* did; and he came to my Lord *Mobun*, and Bowed to him, and said, *He had a Kindness for his Lordship.* And my Lord *Mobun* replied, *He had a kindness for him.* My Lord *Mobun* said to him, *He hoped he was not come to Vindicate any thing of Mrs. Bracegirdle.* *Mr. Mountford* said *Nor*, and asked if his Wife had done any thing to him, and said, *He was very sorry his Lordship should have any thing to do to Vindicate Mr. Hill in such Rudeness.* He saith, *Capt. Hill* was at the lower end of the Street, and *Capt. Hill* heard him say so, and came up and said to him, *Mr. Mountford, if you have any thing to say to me, I can Vindicate my self, and pray now Draw;* and he went into the Street, and *Mr. Mountford* drew and met him, and made three or four Passes, and in the Passes, the Sword was Broke: He cannot tell which Sword it was that was Broke, he supposeth it hit against the Hilt, and snapped in two.

L. Mobun. I desire he may be asked, where I was when they Fought?

M. Walker. My Lord stood upon the flat Stones, he saith, by the House side all the while, and they were in the middle of the Street.

L. Mobun. My Lord, I desire he may be asked, whether *Mr. Mountford* had his Sword by his side, and where it was, and whether I meddled with him?

Mr. Walker. He saith my Lord *Mobun* did not meddle with him, but stood upon the Flat-stones, nor did not offer to draw his Sword, and when *Mr. Mountford* came down, he carried his Sword in his Hand.

L. Mobun. My Lord, I desire he may be asked, whether *Mr. Hill* did not stay in the Street to ask *Mrs. Bracegirdle's* Pardon?

Mr. Walker. He saith, he desired to see *Mrs. Bracegirdle*, and to beg her Pardon, and as soon as he had seen her, he would be gone?

L. H. Steward. How can he tell that? Where was he?

Mr. Walker. He was just by my Lord *Mobun* and *Mr. Hill* in the Street, and *Mr. Hill* said, he would but stay and beg *Mrs. Bracegirdle's* Pardon for what he had done, and he would go Home.

L. Mobun. I desire he may be asked, whether I offer'd to Fly when his Master went away?

L. H. Steward. What is it you ask my Lord?

L. Mobun. Whether I offer'd to run away, or make my Escape?

Mr. Walker. He saith, my Lord did not offer to run away, but stood still and said he had done no hurt, nor drawn his Sword.

L. Mobun. I desire to ask him, whether I could not have run away as well as *Mr. Hill*, if I had had a mind?

Mr. Walker. He saith, he might have run away as well as his Master *Mr. Hill*, but he stood still a great while, till the Watch came and took him, and he gave himself up.

Mr. Att. Gen. My Lord, before the Boy goeth away, I desire to know of him whether he has not been already Examined upon his Oath elsewhere?

Mr. Walker. Yes, my Lord, he was Examined at *Hick's-Hall*, and was kept in Prison two Days.

Mr. Att. Gen. Were you Examined before the Coroner?

Mr. Walker. He saith he was Examined before the Coroner.

Mr. Att. Gen. Which was the first Place he was Examined at?

Mr. Walker. He saith he was Examined at *Hicks's-Hall* first.

Mr. Att. Gen. When he was Examined before the Coroner, did he give the same Evidence as he does now?

Mr. Walker. He gave the same Evidence before the Coroner that he doth now, as near as he can remember.

Mr. Att. Gen. When you did make Oath before the Coroner, was it read to you what you Swore?

Mr. Walker. He saith, his Evidence was not read to him.

Mr. Att. Gen. Did you Subscribe the Evidence you gave before the Coroner your self?

Mr. Walker. Yes, he did.

Mr

Mr. Attorney General. Did not you Write your Name your self ?

Mr. Walker. Yes, he saith.

Mr. Attorney General. Did you not know what it was you Subscribed your Name to ?

Mr. Walker. He saith, it was not Read to him afterwards, he knoweth what it was he gave in.

Mr. Attorney General. Are you sure it was not Read to you ?

Mr. Walker. He saith, he is sure it was not Read to him.

Lord High Steward. Was it not Read to him before he Subscribed it ?

Mr. Attorney General. That I did ask him, my Lord.

Mr. Walker. He doth not remember that it was Read to him at all.

Lord High Steward. Can he Read himself ?

Mr. Attorney General. He writes a very good Hand my Lord.

Mr. Walker. He saith, they bid him put his Hand to it; and as soon as he had put his Hand to it, they put him out, and bid him call another Woman.

Mr. Attorney General. I would have him consider of it, before he makes Answer; because there are several Persons present here, who were present when it was Read to him before he Subscribed it.

Mr. Walker. He cannot remember that it was Read to him.

Mr. Attorney General. Do you remember you Swore at that time, that when Mr. Mountford and Mr. Hill were pushing at one another, my Lord Mobun said, he would stand by his Friend, and Hill was his Friend ?

Mr. Walker. He saith, my Lord said, he would not go, he would stay by his Friends; for Mr. Hill was his Friend.

E. of Carlisle. My Lord Steward.

L. H. Steward. My Lord of Carlisle.

E. of Carlisle. I desire that he may be asked, whether he was the Boy that said to my Lord Mobun, Pray my Lord, Good my Lord, do not do it, alter your Resolution.

L. H. Steward. Call the Boy agen (which was done) was you by when those words were spoken; Pray my Lord, will you Repeat your own Question ?

E. of Carlisle. Whether he was the Boy that said to my Lord Mobun, Pray my Lord, Good my Lord, do not do it, alter your Resolution, or Defer it to another Day.

Boy. No my Lord, I did not hear him.

L. H. Steward. Did not you say so your self ?

Boy. I said no such thing, nor heard no such thing said by any body.

L. H. Steward. Do you bring any more Witnesses my Lord.

L. Mobun. Yes my Lord, Mrs. Elizabeth Walker, Mrs. Bracegirdle's Maid.

Elizabeth Walker. Here my Lord, I am she.

Mr. Attorney General. My Lord, before my Lord Mobun proceedeth to Examine any other Witness, I have one thing Humbly to offer to your Lordships.

Then Proclamation was made for Silence.

Mr. Attorney General. Of what Consequence it will be to my Lord Mobun, I must Submit to your Lordships; when you have heard it, that is, whether it may not be proper now, since this Boy has given an Evidence, so very Different from what he gave upon his Oath before the Coroner, to have his Deposition that he made before the Coroner, Read in his Presence.

Lord Mobun. My Lord, I think I ought to conclude, and give all my own Evidence before Mr. Attorney, maketh his Remarks.

Lord High Steward. Then Referee that till the last, Mr. Attorney.

Mr. Attorney General. My Lord is certainly in the Right of it, there ought to be no Observations made upon his Evidence, and we shall be sure to keep exactly to the usual method in this matter; but I take it to be the Course of Evidence, where there is an Objection to what the Witness delivers now, which does arise from what the same Witness has Sworn before, it is proper to make the Objection, as soon as he has delivered such Evidence, whilst the matter is fresh in your Lordships Memories.

L. H. Steward. Mr. Attorney, let the Boy stay, he shall be called upon afterwards; but let my Lord go on now with the rest of his Witnesses.

Lord Mobun. Here is Elizabeth Walker, my Lord.

Lord High Steward. What is that Womans Name ?

Lord Mobun. Elizabeth Walker, did you live with Mrs. Bracegirdle.

El. Walker. Yes, I did my Lord.

Mr. Attorney General. This Person has Conceal'd her self, we have been Endeavouring to find her out all this while, but could not.

Lord High Steward. What do you ask her my Lord ?

Lord Mobun. I desire she may be asked, whether she lived with Mrs. Bracegirdle, and what she saw and observed that Night Mr. Mountford was killed.

H

El. Walker.

El. Walker. If it please you, I lived then with her.

Lord High Steward. I cannot hear what she said, *Mr. Walker*, I think you must go thither agen, speak out Woman.

El. Walker. I was her Servant at that time, when *Mr. Mountford* was killed. And may it please you my Lord, that Night, Old *Mrs. Bracegirdle* and her Daughter, were invited to Supper at one *Mr. Pages* in *Drury Lane*, and coming home about Ten or Eleven a Clock out of *Drury Lane*, my Mistress desired me to go to *Mr. Mountfords*, to see if *Mr. Mountford* was come home. I went, and they said, he was not come home. She desired me then to go again, and tell *Mrs. Mountford*, that if he was not come Home, she should send to see where he was, and desire he would not come Home without a good Guard; for my Lord *Mobun* and Captain *Hill* were walking about the Street, and she did not know their Design, by reason *Mr. Hill* had his Sword drawn in his Hand, out of the Scabbord. I asked the Reason why he had his Sword drawn, and the Answer was made, he had lost the Scabbord in a Skirmish in *Drury Lane*; but that I know nothing of. *Mrs. Mountford* said, she would send her Maid to see where her Husband was, and I told her, if my Mistress would give me leave, I would go along with her, to bear her Company. And when I returned to my Mistress, she did give me leave, and I went along with her to several places; but we could not find *Mr. Mountford*; so coming home, I went to my Mistress, and I saw them two stand at the Door, and they staid there above an hour, and in the mean time our Land-lady *Mrs. Brown*, heard the Watch come into the Street, and said, she would go to the Door, and bid the Watch Seize them; and she did go out, and I was kept within Doors, and heard her talk to the Watch, but what she said, I cannot tell; but presently the Watch went away and left them. And I stood at the Door, and heard *Mrs. Brown* say, there cometh *Mr. Mountford*; and she would go speak with him; and with that, she went as fast as she could to meet him, and came to him a good way before he came down to them, and took him by the Arm thus to stay him, and she said, Captain *Hill* and my Lord *Mobun* was walking in the Street, and Captain *Hill* had his Sword in his Hand drawn, and she did not know what their Design was.

Lord High Steward. Indeed she must speak louder, or I cannot tell what she sayeth.

El. Walker. My Lord, I say *Mrs. Brown* when I was at the Door, said, yonder cometh *Mr. Mountford*, and she said, she would go and meet him, and away she went as fast as she could towards him; and when she came up to him, she took him by the Arm thus, and desired him, that he would not come down that Street, but go to his own House, for there were Captain *Hill* and my Lord *Mobun* walking in the Street, and she did not know what their Design was, but Captain *Hill* had his Sword drawn in his Hand. If it may please you my Lord, *Mr. Mountford* did not answer her a word; but pressed forward to meet my Lord *Mobun* and Captain *Hill*. If it please you my Lord, they met one another, and my Lord *Mobun* and *Mr. Mountford* Complimented one another very lovingly, and said, they were glad to see one another; and *Mr. Mountford* said to my Lord, he had a great Respect for his Lordship, and my Lord Replied to him again, by my Honour, I have the like for you *Mr. Mountford*, and with that, they Embraced one another. I am sure this is the Truth, for I followed *Mrs. Brown* out, and stood by when it was done. *Mr. Mountford* told my Lord, it was a Dishonour to him to keep Company with Captain *Hill*. I will not take my Oath that Captain *Hill* did hear him say so, but he might have heard him, and it may be he did too; and that might occasion the quarrel; but I will not take my Oath of that. It came just in my Head after this was said, that our Door was open, and I turned my Back to hear and look who was at our Door, and I heard *Mrs. Brown* say, that Captain *Hill* and *Mr. Mountford* were going to Fight: I saw them Fighting, making passes at one another, I saw them Engaged, I never saw men naked Fighting before in my Life.

At which there was great Laughter.

El. Walker. My Lord, I do not understand these matters; I tell you as well as I can, they were Fighting with naked Swords. *Mr. Mountfords* Sword was upon *Mr. Hill* hereabouts, and *Mr. Hill's* Sword was upon *Mr. Mountford* hereabouts; and after they had made two or three pushes at one another, *Mr. Mountford* said he was killed, and threw down his Sword thus, and I took it up, and there was a good piece of the Sword broken off. I turned me about thus, towards our own Hatch at our Door, and there stood two or three People, I cannot say who they were, but I gave them the Sword, and I turned my Face towards *Surry Street*, and saw Captain *Hill* making his Escape, Running up *Surry Street*; and if it please you my Lord, *Mr. Mountford* was the Friend I had most Respect for; and I saw him as fast as he could, going towards his own House, and my Lord *Mobun* stood in the same place that he was in, when he and *Mr. Mountford* were Embracing one another, and I did not see my Lord *Mobun* stir from that place; but when they fought, they were engaged in the middle of the pitched Stones, where there was a place made for the Water to run along the Street like a Channel; and to my Knowledge, I did never see my Lord *Mobun* off of the Paved Stones on the side. I cannot say he was never off, when my Eye was turned another way; but to my Knowledge, I never saw him off of those Stones. If it please you my

Lord

Lord; the next thing that I saw, was this, after Captain Hill run up *Sarry Street*, and Mr. Mouniford did go Home, I saw my Lord Mobun walking up to the End of the Street, where the Watch were coming, and when the Watch came, I see him deliver himself up to the Watch; but I think one of the Watch said he must have his Sword, and he did deliver up himself and his Sword to the Watch. And he bid me take notice, Bear Witness, said he, I have no hand in the Death of Mr. Mouniford. Said I, No, my Lord, I think you have not. The next thing I remember, was Mrs. Page came and said, Mr. Mouniford was killed, upon which, said my Lord Mobun to her, Bear Witness, I had no hand in his Death. Said she, you were in his Company, therefore seize him, and carry him to the Round-house; and the Watch did secure him; and my Lord answered, as he was a Gentleman, he desired to be used like a Gentleman; and they did carry him away to the Round-House. This is the thing that I did say, as near as I can remember, to the Justices; but I have been very much abused and distracted amongst them, and therefore to a Word I cannot say; but, as near as I can remember, being abused at the rate I have been, This I did then say, and it is the Truth.

Lord Mobun. I desire she may be asked whether she was not examined before the Justices at Hick's-Hall, and whether she was not then Mrs. Bracegirdles Maid.

Lord High Steward. Truly, my Lord, I have heard very little of what she has said; but I hope my Lords that have been nearer have observed it.

El. Walker. If it please you, if you ask what was done at Hick's-Hall, I will tell you just as it was, what happened there, and so proceed on to tell you how I have been abused.

Lord High Steward. My Lord, What would you have her asked more?

Lord Mobun. I desire to ask her whether she was not Mrs. Bracegirdles Servant when she was examined at Hick's-Hall, and whether she swore the same there as she saith here, and what was done to her since, or what they would have done, and whether they did not try to make her speak what they would, and to put her out.

El. Walker. If it please you my Lord, that next Morning, there came several of the Players to me, to ask me what I knew of the Death of Mr. Mouniford, and I told them; but they did not like what I said, and they seemed discontented at me. And when they were to go to Hick's-Hall, they said they had no need of my Evidence, they could do without me. So Mrs. Brown and her Maid they went away, and left me at Home; what they did, or where they staid, I do not know; but about two or three Hours after, a Messenger came and said, my Mistress and I must go to Hick's-Hall to be examined before the Justices; and we went, and when we came there, all were examined, and I was examined in the last Place; where, my Lord, I gave in the same Evidence that I do now, as near as I can speak. I do verily believe it to be the same, but I have had so much Trouble with their abusing me, that I cannot speak to every Word or Particular Thing. For my Mistress stood before me, and said, they brought Evidences that confounded themselves, and another said, hang her Jade, pull her by the Coat. I turned me to the Justices, and said, I hoped I might speak now I was there; but it may be for fear of my Mistress, I did not then speak all that I have done now, because I have called more since to my Remembrance. And there is one particular thing that I call to mind now, I remember, that in our Parlor, as soon as they came home out of Drury-Lane, there was a Discourse between my Old Mistress and my Young, that Captain Hill waited at the Door to see my Mistress, and that if he might but have leave to see her, and to beg her Pardon, they would be gone thence to their own Lodging; and I said to my Mistress, if she would give me leave, I would go out to them, and demand Captain Hill's Sword, and then he might come in.

Lord Mobun. I desire she may be asked whether she was not turned away and threatened.

El. Walker. I am going on to tell my Lord what happened in our House that Night. I told my Mistress, if she would give me leave, I would undertake to get Captain Hill's Sword from him, and then she might let him come in and see her, and beg her Pardon, and I thought it would prevent a great deal of Danger that might follow else. And my Mistress said I was a Prating Slut, and my young Mistress said, if he begged her Pardon upon his Knees never so, she would never forgive him, nor see him more. My Lord, there was another Discourse in the Street, that Captain Hill had made a Vow that he would kill himself that Night, and that my Lord Mobun, having a Respect for him, watched to prevent him from doing himself a Mischief. That was discoursed in the Street, but I cannot say it was so of my own Knowledge.

Then another Proclamation for Silence was made.

Lord Mobun. I desire she may be asked whether she was not turned away, and whether she was never threatened.

El. Walker. If it please you, my Lord, that Night that I gave in my Evidence at Hick's-Hall, by their Talking, I knew before I went from Home, what a Life I should have with my Mistress, for I knew they did not like my Evidence, and I was afraid of coming Home, and went and staid with my Sister, but notwithstanding I went Home about nine a Clock, and they were very inveterate against me, and I told one of them, I had witnessed the Truth, and nothing but the Truth, and that I would stand by. If it please you, my Lord, the next Morning there

there was this *Ann Jones* that lay with me that Night, and she told me that in the Morning they threatned, and intended to fetch me to Mrs. *Mountford* to rattle me for what Account I had given in, and she giving me this Item, I got up and went to dressing my Dinger, and Mrs. *Mountford* sent a man that I know by sight, I think it was one *Roberts*, I believe that was his Name, whereupon he came and asked me where was Mrs. *Bracegirdles* Maid; I said, I was she, and then he said Mrs. *Mountford* desired me to come to her. I said, I had given in my Evidence where I ought to do it; and I had nothing to do with her; but it was upon this account, not that I had any Antipathy against Mrs. *Mountford*, but only as *Ann Jones* had given me that Item of a Design to send me to her to rattle me for the Evidence I had given in, and I did not know what might come of it, or what their Design might be.

Mr. Att. Gen. My Lord, I would not interrupt any Witness, but because she speaks of what was said by *Jones*, and Mrs. *Bracegirdles*, I desire they may be by to hear what she saith.

Lord Mobun. My Lord, I desire my Witnesses may not be hared.

Lord High Steward. This is not haring of Evidence, my Lord.

Lord Mobun. My Lord, I desire I may go on with my Evidence without Interruption.

Lord High Steward. My Lord, This is no Interruption.

Mr. Att. Gen. Pray my Lord let Mrs. *Mountford* be called in to hear what she saith of her, I desire she may be by.

Lord Mobun. My Lord, I have no more to say to her.

Mr. Att. Gen. But then my Lord, before she goeth away, I have two or three Questions to ask her.

Lord High Steward. What do you ask her, Mr. Attorney?

Mr. Att. Gen. She saith she was examined at *Hick's-Hall*, I desire to know if ever she was examined before the Coroner.

El. Walker. If it please you, my Lord, I was not, and I will give you the reason.

Mr. Att. Gen. Ay, pray let us hear it.

El. Walker. Why you have not heard how badly they used me after this.

Mr. Att. Gen. But pray Mistress answer my Question.

El. Walker. But, my Lord, if it please you, I went to my Sister, and staid with her till eight or nine, and my Aunt told me there had been a Porter to enquire for me, to go to the Jury; I was sorry I was not at Home, but I took a Neighbour with me to go to Mrs. *Mountford*, to see if the Jury were not gone, and I knowing how they had threatned me, I desired him to leave me at a Victualling-house by *Temple-Bar*, and go and tell them, if the Jury were not gone, I was ready to wait upon them; he went, and I remained at the Victualling-house, and he came again, and told me, Mrs. *Mountford* said they had done without me; but he was a little surprized.

Mr. Att. Gen. My Lord, she maketh a long Answer to a short Question. I would ask her another Question presently; but by the way, as to this Examination at *Hick's-Hall*, I would observe that it is a very unusual, and I think, under Favour, a very unwarrantable thing for Justices of the Peace, to take upon them, under a Pretence of considering, in order to Bail a Person charged with Murder, to enter into a particular Examination of every one of the King's Witnesses, as if they were either a Grand Inquest, charged upon Oath for finding a Bill of Indictment, or Coroners to take an Inquisition of the Murder, both the Grand Jury and the Coroner are upon their Oaths to keep the Kings Evidence secret; but this is to make it publick by an indirect way by a Justice of Peace's Examining, in order to the Bailing of an Offender. But I would observe this Woman goeth away from her Mistress, and continueth away, and concealth her self; she was not to be found to be examined before the Coroner, the proper Officer, nor are we able to tell where she has been; I desire some Account may be given, in whose hands she has been all this time.

Lord Mobun. My Lord, I desire your Lordship's Opinion, whether this may be permitted, that he should talk thus.

Lord High Steward. What do you say, my Lord?

Lord Mobun. My Lord, I desire to know whether he may interrupt me in my Evidence thus: All this matter is foreign to the Business before your Lordships.

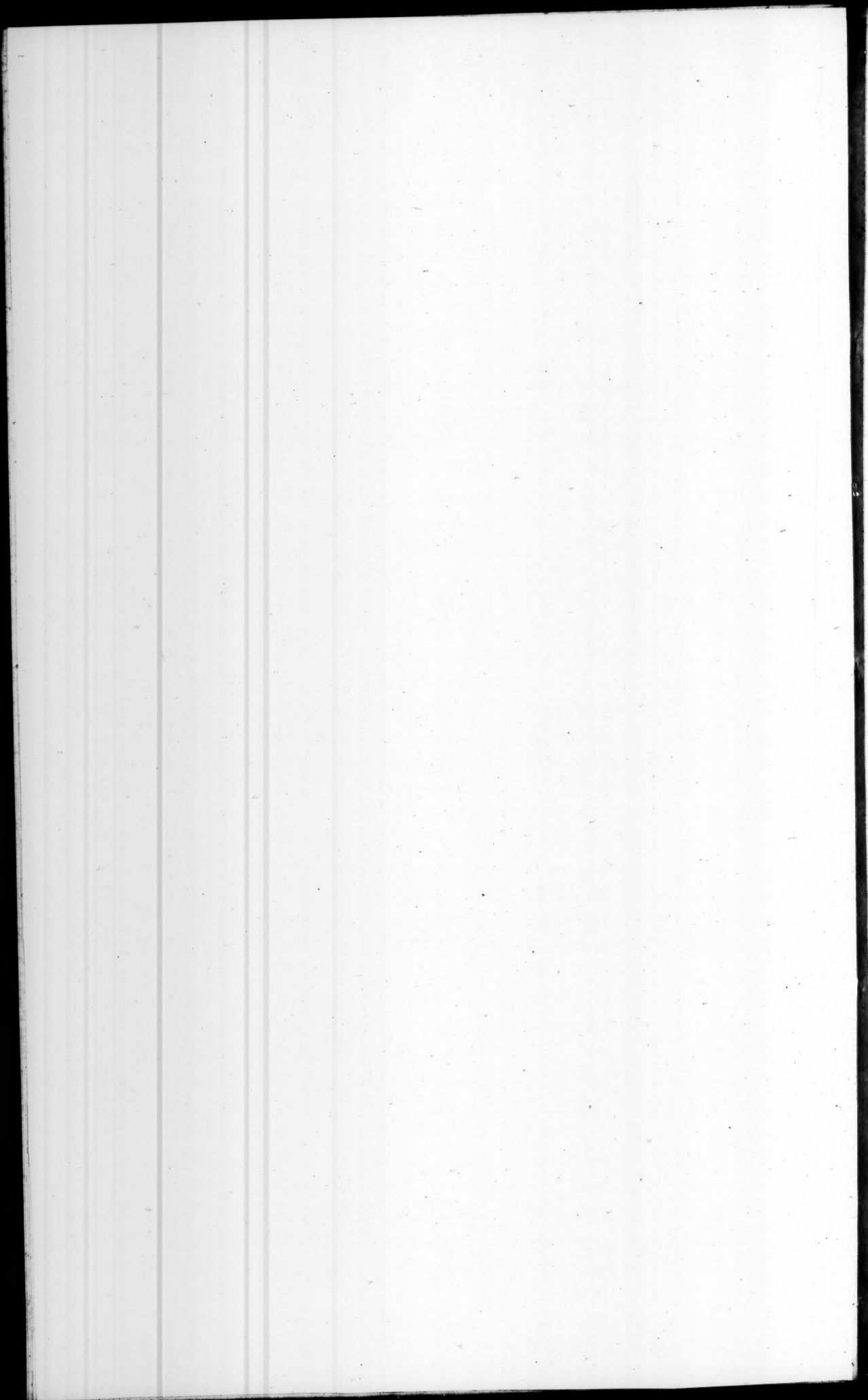
Mr. Att. Gen. If you please, I would ask her this one Question.

Lord ———. Under Mr. Attorney's Pardon, I think the Prisoner, or his Witnesses, ought not to be interrupted; but if he have any Remarks upon the Evidence, when they have gone through he may call them again, and ask them any Questions, or make any Remarks upon them.

Mr. Att. Gen. My Lord, I would ask her but one Question.

Lord High Steward. What is it, Mr. Attorney?

Mr. Att. Gen. If she heard Mrs. *Brown* say to Mr. *Mountford* that she would not have him come forward, because my Lord *Mobun* and Mr. *Hill* were there, and she did not know what their Design was.



El. Walker. If it please you my Lord, I did hear them, and I was just by them; and there was none but she and I.

Mr. Att. Gen. She upon her Oath saith she did not tell him any thing more, than that she would speak with him; but he did not hear her, or hearken to her: But my Lord, I have no more Questions to ask her.

L. H. Steward. Have you any more to ask this Witness, my Lord?

L. Mobun. No, my Lord.

L. H. Steward. Who is your Lordships next? Pray call your next Witness.

L. Mobun. I desire *Ann Jones* may be Examined.

She came to the Bar.

L. H. Steward. What doth your Lordship Examine her to?

L. Mobun. I Desire she may be asked what she knoweth of what passed that Night *Mr. Mountford* was hurt, and tell the whole Story.

Jones. First, I saw *Mrs. Bracegirdle* coming home with her Mother and *Mr. Page*, about Ten a Clock at Night, and there were *Captain Hill* and my Lord *Mobun* with them when they came Home; but they did not come in with them, but walked in the Street about an hour and an half; and after they came in, *Mrs. Brown* sent to *Mrs. Mountford*, for she said *Captain Hill* had some Design, and my Lord *Mobun* upon *Mr. Mountford*, but *Mr. Mountford* not being at Home, they sent to all the Taverns thereabouts, but could not find him; they came Home again, and told *Mrs. Mountford* and *Mrs. Bracegirdle* they could not find him, and there my Lord *Mobun* and *Captain Hill* walked too and fro about the Street for an hour and an half in all; about an hour after they had been to look for *Mr. Mountford*, or about three quarters of an hour *Mr. Mountford* came down, and I saw my Lord *Mobun* and *Captain Hill* at this Door.

L. Mobun. At whose Door I desire she may be asked.

Jones. At this *Mrs. Browns* Door, and *Mr. Mountford* coming down, my Lord *Mobun* met him, and embraced him, and said he had a great Honour and Friendship for him, and *Mr. Mountford* said he had a great Honour and Respect for his Lordship. Saith my Lord *Mobun*, *Mr. Mountford*, I suppose you are sent for. No not I, upon my Honour, said he. Upon that he up and told him how they had like to have got *Mrs. Bracegirdle* into a Coach, and carried her away, but were prevented. Saith *Mr. Mountford*, as to *Mrs. Bracegirdle*, I have nothing to do, she is no Concern of mine, if my Wife have offended your Lordship, she shall beg your Pardon. Said *Mr. Mountford* again, I hope your Lordship will not vindicate *Mr. Hill* in any such Action as this. With that *Captain Hill* came up and hit *Mr. Mountford* a Box on the Ear, and bid him draw. And said *Mr. Mountford*, Damn ye, What is that for? And thereupon he drew; and I tell you what I saw, they both came off from the paved Stones into the middle of the High-way, and made two or three Passes at one another; at the second Pass *Mr. Mountford's* Sword broke, and he flung down his Sword, and run away, and said he was a dead Man; *Mr. Mountford* went one way, and *Mr. Hill* another.

L. Mobun. I desire she may be asked if I did meddle with *Mr. Mountford* at all, or helped *Mr. Hill* whilst they fought, and where I stood all the while.

L. H. Steward. What say you? Answer all those Questions my Lord asked you.

Jones. If it please your Lordship, he stood upon the Causey, the paved Stones, in the same Place where he was all the time.

L. H. Steward. Did my Lord meddle at all?

Jones. No, I did not see my Lord *Mobun* meddle.

L. H. Steward. Was my Lords Sword drawn?

Jones. I did not see it drawn.

L. Mobun. I desire she may be asked whether I run away, or whether I did not surrender myself to the Watch.

Jones. If it please your Lordship, I did not see my Lord run away. But I did see him surrender himself.

L. Mobun. I desire she may be asked if she was not examined at *Hick's-Hall*.

Jones. Yes my Lord, I was.

L. Mobun. And whether she did not there declare the same upon Oath that she doth now.

Jones. Yes, my Lord, I did.

L. H. Steward. Have you any thing to say to this Witness, Mr. Attorney?

Mr. Att. Gen. My Lord, I would only ask her this Question: She saith my Lord *Mobun* was upon the Pavement, or Causey, as she calleth it, all the while; I desire to know whether the Scuffle did not begin upon the Pavement.

Jones. Yes, it did upon the Causey.

Mr. Att. Gen. I desire to know whether she saw any Blood upon that Causey the next day.

Jones. No, I saw none.

L. Mobun. I desire she may be asked whether they did not fight in the middle of the Street.

Jones. Yes, and please your Lordship, I did see them make Passes at one another in the Street.

L. Mobun. I desire she may be asked, whether the Sword was not broken there in the middle of the Street, and whether *Mr. Mountford* did not then cry out, I am killed.

Jones. His Sword was broken in the middle of the Street; but I did not hear *Mr. Mountford* say

say he was killed, but he flung down his Sword, and run away, and said, I am a dead Man.

L. H. Steward. Have you done with this Witness my Lord?

L. Mobun. Yes, my Lord.

L. H. Steward. Have you any more to say to her, Mr. Attorney.

Mr. Att. General. No, my Lord.

L. H. Steward. Then who is your next Witness, my Lord Mobun?

L. Mobun. Edward Warrington, my Lord.

Who came to the Bar.

L. H. Steward. What say you to him, my Lord?

L. Mobun. I desire to ask him where he liveth, whether he be not a Neighbour to Mrs. Bracegirdle? And what he saw that Night Mr. Mountford was killed? I desire he would give his whole Evidence?

Warrington. I live if it please your Honour, over against Mrs. Bracegirdles House, at the White Swan, on the other side of the way.

L. Mobun. I desire he would tell all that he saw that Night.

Warrington. All that I can say, is about Nine or Ten a Clock, as near as I can guess: I heard a Disturbance at Mrs. Brownes Door, where Mrs. Bracegirdle Lodgeth, and looking out, I saw there were two Gentlemen talking to Old Mrs. Bracegirdle, and Mrs. Bracegirdle and some People went into the House, and when they were gone into the House, I saw the two Gentlemen walk about the Street, one's Sword I saw was drawn.

L. H. Steward. Whose Sword was that was drawn?

Warrington. Captain Hills, as they say, for my part, I did not know either of them, they walked there for the space of an Hour and a half, I saw them oppose no Body. But as they came along, I heard them ask a Gentleman that came towards them, whether he would drink a Glas of Wine or not.

L. Mobun. My Lord, I desire he may be asked, what he saw afterwards of Fighting.

Warrington. For Fighting, I saw Mr. Mountford come down Norfolk Street, and I saw him turn at the Corner with his Sword in his Hand in the Scabbord, to the best of my Knowledge, and seeing some People there, as I suppose, went towards them, and came up to them; and I saw my Lord Mobun to the best of my Knowledge, lay his Hand upon his Shoulder, and Embraced him, and Complimented him; but I cannot be certain what the words were that passed between them.

L. H. Steward. Did you see them Fight?

Warrington. If it please your Honour, I did see their Swords both drawn, Mr. Mountford and he that they said was Captain Hill; there were some Women about them, so that I could not so well discern when they drew their Swords, or who begun the Quarrel. Hill they said, had no Scabbord to put his Sword in, my Lord Mobun stood by, and laid his Hand upon Mountfords Shoulder.

L. H. Steward. Was that before the Fighting, or at the time of the Fighting?

Warrington. It was before their Fighting, at their first meeting.

Lord Mobun. I desire your Lordship would please to ask him, in what part of the Street they fought, and whether I was near them then.

Warrington. When first I saw their Swords drawn, it was upon the flat Stones of the Pavement; and I saw Mr. Hill come off of the Stones, and Mr. Mountford with him. Mr. Hill was, I think the first, and they came both up together with their Swords drawn in their Hands, they were not a Swords length off from one another; and they passed at one another, and I run into our House to fetch a Paring Shovel, with an intention to part them; but before I could get out of Doors with the Paring Shovel in my Hands, the one was gone one way, and the other, the other way, and I saw no Body in the Street to ask any Questions of, but my Lord Mobun at the Corner, three or four Doors above this place. And I came out, and asked which way they were gone, my Lord Mobun turned about, and I was a little afraid of him at first; but said he, here am I, I did not offer to oppose or draw my Sword, you all know it; and immediately if it please your Honour, the Watch came in, that is all I know.

Lord Mobun. I desire he may be asked, whether I did not go towards the Watch, and Surrender my self.

Warrington. I cannot say that, but the Watch came in a Minute. My Lord turned about, and said, here am I, I did not oppose or draw my Sword, you all know.

Lord Mobun. Pray my Lord, let him be asked whether I did offer to fly. And whether I had not as much time to fly, as Mr. Hill.

Warrington. I cannot say that my Lord. I suppose he might have gone away as well as Mr. Hill, for they were both together.

Lord Mobun. My Lord, I desire he may be asked another Question, whether when Mr. Mountford came into Howard Street, he did not come out of his way to his own House, to come towards us.

Warrington. My Lord, if it please your Honour, it was out of his way; but whether he did it on purpose, or because he saw People there, I cannot tell.

Lord Mobun. I desire he may tell you where Mr. Mountfords House is.

Warrington.

Warington. Mr. Mountfords House is in *Norfolk Street*, two Doors in the Corner out of the Cross Street; and this was done in *Howard Street*.

L. H. Steward. I would ask you a short Question, whether that was the way to his House that he went.

Warington. No, it was not the way my Lord; for he turned on the Right Hand, and he should have kept strait along.

Lord Mobun. I desire he may be asked, whether he was not Sworn at *Hick's-Hall*, and whether he gave not the same Evidence there, that he doth now.

Warington. I was Sworn there, and did to the best of my Knowledge, give the same Evidence I do now.

L. H. Steward. If I understand you aright, you say both the Swords were drawn of *Mountford* and *Hill*?

Warington. Yes my Lord, I did.

L. H. Steward. Can you say whether *Mountfords* Sword was drawn before he was hurt, or not.

Warington. If it please you my Lord, I cannot tell that, I cannot be positive whether it was or no; for there were Women about them, I say, at first, and I could not discern the beginning; and I did not stand to see them push, for as soon as I saw their Swords drawn, and they come off the Pavement to Fight, I run into the House to fetch a Paring-Shovel.

Lord Mobun. Now my Lord, I will call another Witness.

L. H. Steward. Mr. Attorney, have you any Questions to ask this Witness?

Mr. Att. General. No my Lord.

Lord Mobun. Then my Lord, I will call another Witness to shew you the Reason why *Mr. Hill* and I stayed in the Street, and what was the Business we stayed for, I desire *Ann Knevitt* may be Examined.

She came to the Bar.

L. H. Steward. What do you ask her my Lord?

Lord Mobun. I would ask her where she liveth, and what she knoweth of this Business.

Knevitt. My Lord, I live in *Howard Street*, exactly against *Mrs. Bracegirdles* Lodging, and my Lord *Mobun*, as he gave his own Name to be to the Watchmen, and another man that they called *Captain Hill*, for so he gave his Name to be; they came down with *Mrs. Bracegirdle*, both the *Mrs. Bracegirdles* into the Street, and came to their Door, and *Old Mrs. Bracegirdle* put her Daughter in at the Door, and then she stood still and talked with the Gentleman, and asked them their Business. They said, they wanted to beg the young Womans Pardon for what they had done, and then they would be gone. She said, she thought they came to Rob her. They said no, they came upon a very Honourable Design, she said, then they might have come at a more Seasonable time; but she believed they came to Rob her.

Lord Mobun. What time of Night was it?

Knevitt. It wanted a quarter of Ten I believe, or it was about Ten, a quarter over or under, I cannot exactly tell. They said, if she would give them leave but to speak to her, and beg her Pardon for what they had done, they would go home immediately. She said she would not, they should not see her any more that Night: Then one of the Gentlemen, I know not which of them it was, said, they would walk a little while in the Street, she did see them walk very quietly, but she made a great Noise her self; and at last she went in, and shut the Door, and the Gentlemen walked quietly up and down; and by and by, they went to the Door again, and desired to be admitted to speak with young *Mrs. Bracegirdle*, that they might beg her Pardon for some affront that they had put upon her, I suppose, and she still refused them, and would not let them speak with her; and several times they called and knocked at the Door, and still desired but to speak with her, and beg her Pardon, and they would be gone home, but she every time refused it.

L. H. Steward. Woman, I do not hear you, you must speak louder.

Lord Mobun. My Lord, I desire your Lordships will let one of the Clerks come, and take the Evidence, and Report it to you.

L. H. Steward. If it be material, another must Report it; for I have not heard one quarter of it.

Lord Mobun. It is very material my Lord, to shew the Reason why we stayed there.

Knevitt. My Lord, I will Repeat it over again if you please.

L. H. Steward. Then pray speak so loud that I may hear.

Knevitt. My Lord *Mobun* is a perfect Stranger to me, I only tell you what I saw and heard. At the first beginning of all, two Gentlemen and two Women came to a Door over against our Door, and at that House *Mrs. Bracegirdle* and her Daughter lodged, the Gentlemen gave their Names to the Watch, afterwards to be my Lord *Mobun* and *Captain Hill*: So when they came there, the Old Woman put her Daughter in at the Door, and when she had pulled off her Hood and Scarf, she came to the Door, and asked them their Business; and they told her, they wanted to beg her Daughters Pardon for what they had done; but she abused the Gentlemen mightily, and gave them very ill words, and said, she believed they came to Rob her Daughter, they said no, they came upon a very Honourable Design, then she said, they should have come Honourably at a Seasonable time; they said it was not an unreasonable time, for she was out of Doors her self at that time. So she stood there a little, and then at last she went in a Doors, and shut the Door, and some of them opened the Door again, and they were walking upon the Causeway, and came up to the Door, and still desired the same thing, to speak with the young Gentlewoman to beg

he

her Pardon for what they had done, and they would go home for that Night. One of them, I think it was *Mr. Hill*, said he had given her an Affront, and he desired to beg her Pardon; but still they said, he should not be admitted to speak with her. Then one of them, I think it was *Mr. Hill*, desired she would be pleased to come but to the Hatch, that he might see her, and beg her Pardon, and he would not desire to come in, but that would not be permitted. So one of them made answer, that they would not stir till they did see her, and they would walk there all Night.

L. H. Steward. Cryer, Call for Silence, and pray my Lord Great Chamberlain, take some Order with those People behind there, for they cannot hear themselves what the Witnesses say, and therefore they are Resolved we shall not hear them neither.

Proclamation was again made for Silence.

L. H. Steward. Now go on Woman.

Knevitt. They said they would stay in the Street all Night, unless they did speak with her: But if she would give them leave to speak with her, they would depart to their own Lodgings immediately: but they were denied to be admitted to speak with her. Whereupon one of them called unto his Boy, to bring him his Cloak; but then he said, he would not have his Cloak, he would walk without it, because they had not both of them Cloaks; by and by they sent for a bottle of Wine, and there they Drunk her Health, and took several Turns, and after they had Drunk off the Bottle, or some part of it, they went to the Door again, and knocked at the Door, and somebody answered from within, for they were not at the Door, what they would have; They said the same thing as before, that they desired only to see her, and beg her Pardon, and they would go home; for it was a very cold Night, and it was not Convenient to walk there, but they still refused to let them in: By and by, the Watch came down, and asked who was there, and what were their Business, and one of the Gentlemen made answer, and said, He was a Peer, and his Name was *Mobun*, the other said, his Name was *Hill*. So the Watch went by, and said no more, but some Body made answer, and said, there was a Gentleman had a Sweet-Heart in that Street, and he wanted to speak with her. Just at that time, I went up stairs to warm a Bed in our House, and whilst I was warming the Bed, I heard a little bustle in the Street, and running to the Window, there I saw a Sword in a Mans Body, I could not tell who the man was, nor who put the Sword there, but the man that drew out the Sword, run away as hard as he could and the man in whose Body the Sword was, went as fast as he could the other way. And my Lord that gave his Name to the Watch to be *Mobun*, stood on the farther side of the Street, and said, I have done no hurt to any Body, and I will not stir. And there was a Woman that called out to the Watch to Seize him: but who the Woman was, I cannot tell, but he stood still between *Mrs. Bracegirdles* Door, and the next Neighbours, one that is called *Nuttall* I think, and never stirred till the Watch came to him, and the rest went to *Mr. Mountford*, he said, there was no occasion to lay Hands upon him, for he would not stir from them.

L. Mobun. I desire to ask her if *Mr. Mountford* did not say I am killed after the Sword was broke.

Knevitt. Yes, he did say he was a dead man.

L. H. Steward. What, after his Sword was broke?

Knevitt. After the Sword was drawn out of his Body, his Sword was in his own Hand, I squalled out when I saw the Sword in his Body, and had like to have gone out of the Window, and some body said to me, when I told them why I cry'd out, Will you break your Neck for that Reason? it may be it is one of the Watchmen. No, said I, it is not a Watch-man.

L. Mobun. I desire she may be asked where *Mr. Mountford* and *Mr. Hill* fought, whether it was not in the middle of the Street.

Knevitt. My Lord, it was exactly in the middle, as near as I can guess, rather on our side of the way, with his Arms spread, and his Sword in the Scabbord.

L. H. Steward. Have you any more to ask this Witness.

L. Mobun. No, my Lord.

L. H. Steward. Have you any thing to say to her, *Mr. Attorney*?

Mr. Att. Gen. I would ask her where she liveth.

Knevitt. I live in *Howard-Street*.

Mr. Att. Gen. With whom there?

Knevitt. At one *Mrs. Brewers*.

Mr. Att. Gen. What Employment is your Mistress?

Knevitt. My Mistress keepeth a Coffee-house.

Mr. Att. Gen. Do you live near *Mrs. Browns*?

Knevitt. I know not any of that Name there; but I live over against *Mrs. Bracegirdles* Lodgings.

Mr. Att. Gen. Do not you know the People of that House?

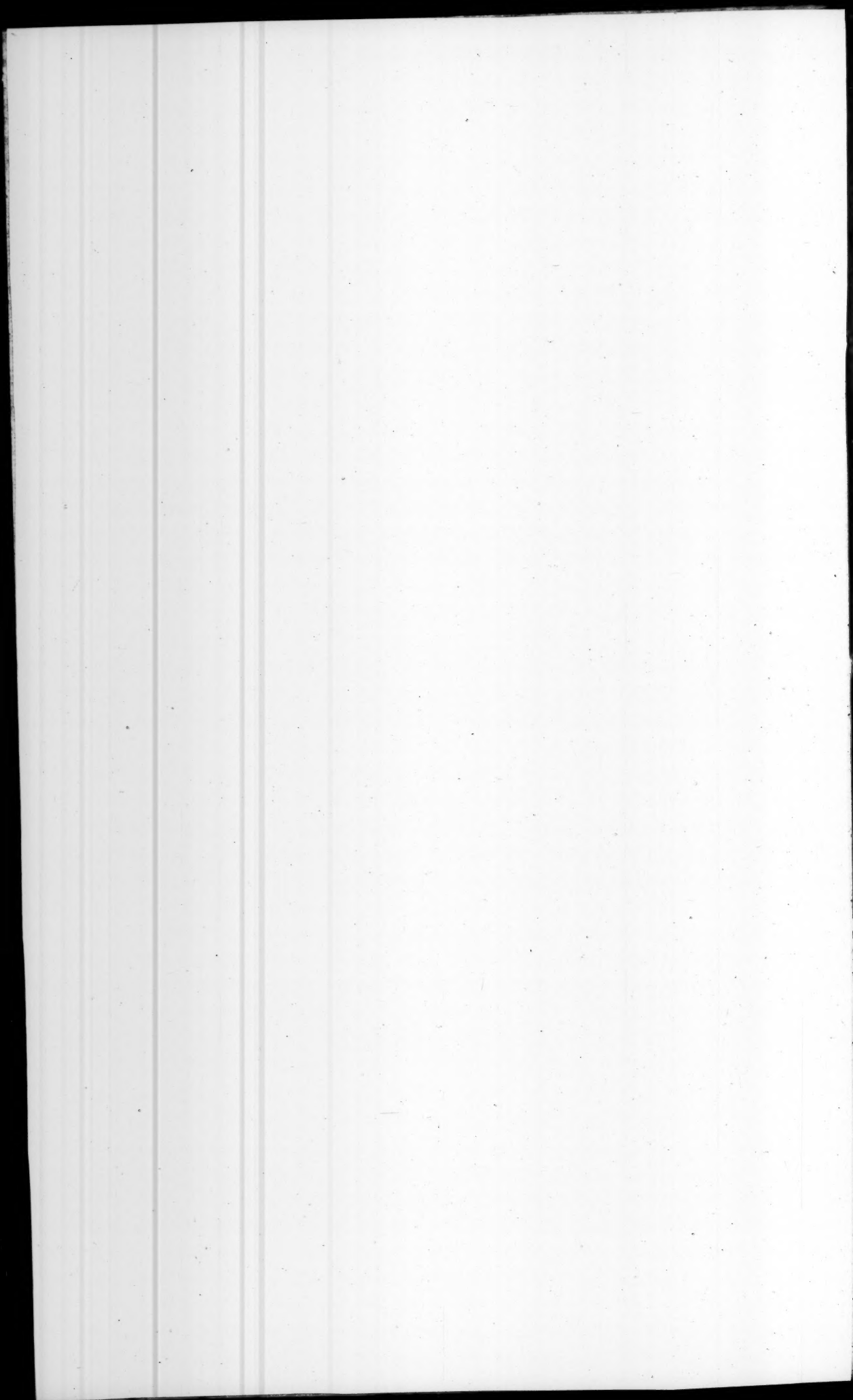
Knevitt. No, upon my Word, I do not know their Names that keep the House.

Mr. Att. Gen. Let me ask you another Question: You speak of many Messages sent backward and forward, and that they said *Mrs. Bracegirdle* should not be spoken with while my Lord staid there; I desire to know if you can tell who any of the Persons were that brought those Messages.

Knevitt. It was the man that called himself my Lord *Mobun*, and the other that called himself *Hill*, they spoke them to me.

Mr. Att. Gen. But who was it that came to them so often, to tell them they should not speak with her?

Knevitt.



Knevitt. It was old Mrs. Bracegirdle.

Mr. Att. Gen. You are sure of that.

Knevitt. Yes, Sir.

Mr. Att. Gen. I would ask you one Question more: When the Watch came up to them, did my Lord tell the Watch his Name was *Mohun*, or only that he was a Peer of England?

Knevitt. He said first he was a Peer of the Land, and then he said his Name was *Mohun*, and the other said his Name was Captain *Hill*.

Mr. Att. Gen. You are sure both of them told their Names to the Watch.

Knevitt. Yes, I am sure I heard them say so.

L. H. Steward. Have you any more Witnesses to call, my Lord?

L. Mohun. No, my Lord, I could call some as to *Sandys*'s Reputation, but I do not think it at all material.

L. H. Steward. Have you any thing, Mr. Attorney, to say to the Boy that was set by? Will you have him called again?

Mr. Att. Gen. My Lord, I did propose that the Boy should hear the Information read which he gave in to the Coroner.

L. H. Steward. Will you have him called again?

Mr. Att. Gen. Yes, if your Lordships please.

L. H. Steward. Well then; call him again.

The Boy came to the Bar, and his Deposition before the Coroner was shewed to him.

Mr. Att. Gen. Look upon that Paper; Is that your Name, and of your Writing?

Boy. Yes.

Mr. Att. Gen. Was it true you swore then before the Coroner?

Boy. Yes, it was true.

L. H. Steward. Read it.

It was taken by the Clerk, and read at the Table.

Clerk of Crown. Reads.

Middlesex. The Information of *Thomas Leake*, Servant to *Richard Hill*, Gent. taken upon Oath this 12th Day of *December*, 1692, before me.

HE saith, that on Friday Morning last, about nine of the Clock, 'twas agreed betwixt my Lord *Mohun* and Captain *Hill*, to seize Mrs. *Bracegirdle* with some Soldiers, and to carry her away in a Coach about nine Miles off, and about ten of the Clock at Night my Lord *Mohun* and Captain *Hill*, with about six Soldiers, did seize her, and endeavour to put her into a Coach; but she refused to go, and they led her down into Howard-Street to her Lodging, and then said they would walk an' hour under Mrs. *Bracegirdles* Window, and another under Mrs. *Barryes*; and about an hour and a half after, Mr. *Mountford* came down the Street, and Mr. *Mountford* and my Lord *Mohun* saluted each other, and my Lord *Mohun* said, he hoped Mr. *Mountford* was not come to vindicate Mrs. *Bracegirdle*; and Mr. *Mountford* hoped my Lord did not come to vindicate the Rudeness done to Mrs. *Bracegirdle* by Mr. *Hill*; and then Mr. *Hill* said, he was able to vindicate himself, and bid Mr. *Mountford* to draw, and they both pushed at each other with their Swords, and my Lord said he would stand by his Friend; and Mr. *Hill* was his Friend; and during the time that Mr. *Hill* and Mr. *Mountford* fought, my Lord *Mohun* did not endeavour to part them.

Jo. Cowper, Coroner

Thomas Leake.

Mr. Att. Gen. My Lords, as to this last Witness, I would desire some of the Watch may be asked, because she saith my Lord told them his Name was *Mohun*, and *Hill* told them his Name was *Hill*, whether it was so or not.

L. H. Steward. Who would you call?

Mr. Att. Gen. Merry; my Lord, if you please.

L. H. Steward. Call him.

L. Mohun. I desire the Constable may be called.

Merry did not presently come in.

Mr. Att. Gen. My Lord, I think it is not so material, as to desire your Lordships should stay for him. But as to that one Witness that entertained your Lordships so long, Mrs. *Bracegirdles* Servant, I desire, that she being here, may give your Lordships an account what became of this Servant of hers.

Mrs. Bracegirdle. My Lord, she went away from me on the Sunday.

L. H. Steward. Who did?

Mrs. Bracegirdle. My Maid that was then, and I sent to her Annts the Week after to seek for her, but she could not be found, where she was I cannot tell, nor could I hear of her from that time to this.

L. Mohun. I desire she may be asked whether she did not discharge her, or pay her her Wages.

Mrs. Bracegirdle. I did not.

L. Mohun. Did not you or your Mother?

Mrs. Bracegirdle. My Mother, my Lord did, she was not my Servant, my Mother hired her, my Lord.

L. H. Steward. What doth she say? Were her Wages paid, and she discharged?

Mrs. Bracegirdle. They were paid because she would not stay with me, my Lord. I desired her to stay, and she would not, and then she demanded her Wages, and my Mother paid her.

L. Mobun. My Lord, I desire you would ask the Maid the reason why she would not stay.

El. Walker. If it please you, my Lord, the reason was this, When I came from *Hick's-Hall* Mrs. Mounsford the next day sent for me, and I lying with this *Ann Jones* that was here, she told me that I should be sent for, and they would rattle me off, for my Evidence that I had given at *Hick's-Hall* for the King; my Lord, and I having such an Item from *Ann Jones*, and they being all Players, I was afraid, because Players have a worse Reputation than other People.

Mr. Att. Gen. My Lord, we shall not trouble your Lordships with any more Witnesses.

L. Mobun. My Lord, I desire she may be asked if there were not Bailiffs sent to take her, and she threatned to be arrested.

L. H. Steward. What say you to that ?

El. Walker. If it please you, my Lord, I cannot swear it, but I will tell you, as near as I can, how it was; I had not time to look over my Cloaths, being in haste when I went, and for fear I should have mistaken any thing, the next day I went to look over my Cloaths, whereupon I found I had mistook, and taken one of my Mistresses Aprons, and left one of my own for it, and knowing their great Suspicion and Inveteracy against me, I went the next day to my Uncles, a Porter's, and desired him to carry it to them; but when I had delivered it to him, he would not let me stay to speak much, for he said there had been three Bailiffs to take me, and I having no Friends, was much affrighted, and run crying up and down, and did not know where to fly; for fear they might lay me in a Prison; and having no Friends, therefore I was forced to fly, and so I went to a Justice of Peace, and there I gave him an Account of the Business, But he said he must have nothing to do with it, I must go again to proffer my Service to my Mistress; but I was not willing to proffer my Service again to her, so I kept away ever since.

L. H. Steward. If you have done with the Evidence on both Sides; What have you more to say, my Lord ?

L. Mobun. My Lords, I hope it will be no Disadvantage to me, my not summing up my Evidence like a Lawyer, being a young man; I think I have made it plainly appear that there never was any former Quarrel or Malice between Mr. Mounsford and me; I have also made appear the reason why we staid so long in the Street, which was for Mr. Hill to speak with Mrs. Bracegirdle, and ask her Pardon, and I staid with him as my Friend, so it plainly appeareth I had no hand in the Killing of Mr. Mounsford, and upon the Confidence of my own Innocency, I surrendered my self, and I commit my self to this Honorable House, where I know I shall have all the Justice in the World.

L. H. Steward. Has your Lordship no more to say ?

L. Mobun. No, my Lord, but that I am innocent of the Fact, and leave my self wholly to your Lordships.

Mr. Sol. Gen. May it please your Lordships, according to my Duty, I am to repeat the Evidence to your Lordships on behalf of the King.

My Lords, the Evidence hath been very long, both that on the Part of the King, and that on the Part of the Prisoner, and I know your Lordships hath given attention to it with very great diligence. I cannot pretend that my Memory will serve me so well, as to repeat the Circumstances of this so long Evidence, but that which has been material, I shall crave leave shortly to mention to your Lordships.

My Lords, I know a great many things may slip my Notice and Repetition, but nothing can slip your Lordships Observation: So that though I should not lay a due weight upon the Evidence for the King, yet your Lordships will let nothing pass without giving it its just Consideration, and will give Judgment according to the exactest Justice.

My Lords, the Evidence for the King doth consist first of Facts precedent to the Killing of Mr. Mounsford, and next what happened at that time.

As to what preceded this Fact thus committed, there were two or three Witnesses called, and the first of them is Mr. Hudson, the next is Mr. Powell, and they give you an Account that Mr. Hill had made his Applications in the way of Courtship to Mrs. Bracegirdle, but that he had an Apprehension that Mr. Mounsford was an Obstruction to him in that matter, and therefore he did declare several times, that he would be revenged of him. And one time (which I think was two or three days before this Fact was done) my Lord Mobun, the Prisoner at the Bar, was at Dinner with Hill, when Hill had this Discourse concerning Mounsford, and said he would be revenged of him. My Lord Mobun was by, they both say, when such Discourse was used by Hill, but they cannot tell what Notice he took of it.

My Lords, after this, the day that this Fact was committed, your Lordships have heard how my Lord Mobun and Hill hired a Coach and six Horses in order to seize Mrs. Bracegirdle and carry her away by Force, and that is proved most fully, both upon my Lord Mobun and Hill, that they were both concerned in that Design, and actually engaged in it; there can be no Dispute of that. Accordingly they Dined together that Day, and at Dinner there arose a Discourse in relation to Mrs. Bracegirdle. And at that time my Lord Mobun said it would cost Hill 50 l. to carry her off. And Hill said, if the Villain resisted he would stab him. And my Lord Mobun said, He would stand by his Friend. This Declaration was made at Dinner, on the Day this Fact was committed; and they then appointed to meet at the Play-house at six a Clock in the Evening, expecting Mrs. Bracegirdle would be there; and accordingly the Coach was ordered to be ready at that time in Drury-Lane.

My Lords, in pursuance of this Design, they both came to the Play house at six a Clock; this

this is proved by two or three Witnesses. When they came there they inquired for *Mrs. Bracegirdle*, but she was not there at that time. And then not finding *Mrs. Bracegirdle* there, your Lordships have an Account from the Coach-man, to what Places he carried them from thence. First to *Drury-Lane*, there they staid some time; and not finding her there, he drove them into *Norfolk-Street*, near the Place where she lodged, and there a Man and a Woman being discourting together, gave them occasion to say, they thought they were betray'd. And *Hill* said; My Lord, let us go and cut that Fellows Throat, or Words to that effect.

Then, my Lords, they drove back from that Place into *Drury-Lane* again, and ordered the Coach to stop over against my Lord of *Clare's* House. There it happened that *Mrs. Bracegirdle* came from *Mrs. Pages* House, where she had Supped. At that time there were present her Mother, her Brother, and Mr. *Page*, and Mr. *Page* led her along. *Hill* came up with seven or eight Soldiers, and forced her out of Mr. *Page's* Hand, and endeavoured to thrust her into the Coach. In that Coach my Lord *Mobun* was, that is agreed upon on all hands, the Coach Door was open; and my Lord *Mobun* was there in it with seven or eight Pistols.

It happening they could not carry her off, but the matter taking Air, People came in to their Assistance, and the Design being prevented, *Hill* would needs go home with her to her Lodging in *Howard-Street*, and my Lord came out of the Coach and went along with them. When they were come to the Lodging, the Witnesses tell your Lordships, that at that time, when Mr. *Page* was going into the House, *Hill* would have had some Discourse with Mr. *Page*, and desired to speak with him; but Mr. *Page* said it was not a convenient time, but to Morrow would do better, and so went into the House, and the Door was locked.

My Lord *Mobun* and *Hill* continued walking about the Streets for about two hours before Mr. *Mountford* was killed, and now your Lordships will observe what Transactions there were during the time that they continued walking in the Streets,

Then there was an Interruption for about a quarter of an hour, occasioned by a Ladies falling into Fits in one of the Galleries; but she being removed, and Proclamation made for Silence, the Court proceeded.
L. H. Steward. Pray go on Sir.

Mr. Sol. Gen. My Lords, I was observing to your Lordships, that part of the Evidence which related to what hapned after the time that *Mrs. Bracegirdle* was in her Lodging. And, my Lord, your Lordships hear from the Witnesses, that my Lord *Mobun*, and this *Hill* continued in the Street, where *Mrs. Bracegirdle* lodged, and walked up and down for near two hours before Mr. *Mountford* came.

During that time, the Constable and the Watch-men have told your Lordships upon their Oaths, that my Lord *Mobun's* and Mr. *Hill's* Swords were both drawn. And the Constable swears expressly, That he asked my Lord *Mobun* what he did with his Sword drawn; and that my Lord answered, he was ready to put it up, and told him withal, he was a Peer of the Realm; the Constable then asked, Why the other Gentleman's Sword was drawn, and my Lord *Mobun* made answer, that his Scabbord was lost.

But your Lordships observe, that before the Watch came, *Mrs. Brown* (as she her self hath Sworn) came out of the House where *Mrs. Bracegirdle* Lodged, and desired to know what they did there, and then *Hill* said, he should light upon *Mountford* one time or another; saith *Mrs. Brown* to him, why, what hath he done to you, to which he Replyed, he hath affronted me, and I will be Revenged upon him; and this was said in the Presence of my Lord *Mobun*, he being just by.

My Lords, after this, in a very short time, Mr. *Mountford* came down, and *Mrs. Brown* telleth your Lordships, that they were too much aware of this matter, that my Lord *Mobun* and *Hill* staid to do *Mountford* a Mischief, that there were Persons sent to *Mrs. Mountford* to give her Notice of it, and she sent Messengers to find out her Husband, to prevent his coming in their way, but they could not find him.

Upon Mr. *Mountford's* coming down, *Mrs. Brown* seeing him, steps up towards him, to tell him that my Lord *Mobun* and *Hill* were in the Streets with their Swords drawn, and she was afraid they had some ill Design against him; but she sweareth she did not, nor could not tell him this, he was in such haste; but one of the Witnesses for my Lord contradicts her in this, and says, that she did tell him, but whether the one Witness swears true, or the other Witness saith true, must be left to your Lordships Judgment.

But Mr. *Mountford* came down immediately, and as he came down, he met my Lord *Mobun*, and they did Salute one another. (for I would not injure my Lord in mistaking the Evidence, as near as I can) but your Lordships will observe the Witnesses say, that presently my Lord *Mobun* asked Mr. *Mountford*, whether he was not sent for, and said, I suppose you have heard what has happened to the Lady this Night, and I hope you do not come to Vindicate *Mrs. Bracegirdle*. And Mr. *Mountford* Replyed, I hope your Lordship doth not come to Vindicate Mr. *Hill* in such an Action.

Thereupon *Hill* stepped up, and struck Mr. *Mountford* a box on the Ear, and at the same time, with his Right Hand, passed at him, and run him through, before his Sword was drawn. This two of the Witnesses for the King say *Mountford* told them upon his Death-Bed, and it was very probable so; because your Lordships observe by all the Evidence, *Hill's* Sword was ready Drawn in his Hand.

There being some Noise, Proclamation was again made for Silence.

Mr. Sol. Gen. My Lords, I was observing that it was immediately, and at the same time that he struck him, and run him through, and it is very likely it was so, as Mr. *Mountford* said when dying; for several of the Witnesses for the King do Swear, that the Box on the Ear, was before his

his

his Sword was Drawn, and *Hill's* Sword was ready in his Hand. So Mr. *Mouniford* said when he was Expiring, and what regard your Lordships will have to the Declaration of a Dying Man, we must Submit to your Lordships Judgment; and Mrs. *Brown* who was there and saw the Fact, Swear eth the same thing, that it was done before *Mouniford* could have time to draw his Sword.

If that be so, it is very plain it was Murder in *Hill*, and your Lordships will please to observe another piece of Evidence that came from the Mouth of a Witness, Examined for the Noble Lord the Prisoner at the Bar, and that is, *Lake* the Boy, he was Examined before the Coroner, indeed he was not called now for the King, and your Lordships may see some Reason why he was not; but your Lordships have had his Deposition before the Coroner read, and by that your Lordships may observe how different his Testimony then was, from what he now giveth. And whether your Lordships will believe what he then said upon his Oath, or what he now saith, is left to your Lordships Consideration. He saith, when he was Examined upon his Oath, soon after the Fact, that my Lord *Mobun* was by, when *Hill* did wound *Mouniford*, and that my Lord *Mobun* said, that he would stand by his Friend, and that *Hill* was his Friend, and that my Lord *Mobun* did stand by, and did not offer to part them, Though he hath something varied from this in his Testimony now, yet he still affirms what he there Swore, to be true.

But further my Lords, your Lordships will Consider what the Constable Swore, my Lord *Mobun* said after he was taken, and when he was in Custody at the Round-House. Whether he did Surrender himself or no, we must leave to your Lordships, upon the Evidence that hath been given on the one side, and on the other. But when he was in Custody (as I said) my Lord *Mobun* asked, whether *Hill* was taken, and being answered No, he said, he was glad of that; but he was sorry he had no more Money about him, and wished that he had that Money which he himself had, and that he would be willing to be hanged for him. So great a kindness he expressed for *Hill*, and said, he had changed Coats with him, and then had *Hill's* Coat on his Back.

This my Lords, is the Substance of the Evidence on the Kings part, and upon the whole of it, it is plain, with Humble Submission to your Lordships, that here was a pre-meditated Malice in *Hill*, by his own Declarations preceding, by what was done at the time of the Fact committed, and by Stabbing him before his Sword was drawn.

The Question will be, whether my Lord *Mobun* the Prisoner at the Bar, was Privy to this Design of *Hill's*, and did so far agree in it, as to keep him Company to Assist and Incourage him; For if he was Privy, and knew of *Hill's* Design, and stayed there for that purpose, to give him Assistance in it, with Humble Submission to your Lordships Judgment, he will be as much Guilty of the Murder, as *Hill* that actually killed him: That therefore will be the question before your Lordships, for your Judgment upon the Consideration of what has been proved in this Case.

My Lords, The Prisoner my Lord *Mobun*, has called and produced several Witnesses to your Lordships, in Defence of himself. The first Witness was called to this purpose, to shew that my Lord had no Malice to *Mouniford*; but that they were very good Friends, but two or three days before, that he spoke of him with a great deal of Kindness, and desired to Drink a Bottle of Wine with him.

Now for this, I would observe to your Lordships, that it is not the Question, whether my Lord *Mobun* had any direct or express Malice against *Mouniford*, but if *Hill* who was so great a Friend of my Lord *Mobun's*, had a Malice against *Mouniford*, and my Lord *Mobun* had so great a kindness for *Hill*, as to Accompany and Assist him in taking his intended Revenge: (Whether it was so or no, your Lordships are to Judge) it will be as much Murder in Law, as if my Lord had himself had a Hand in it.

For the other Witnesses that have been called for the Prisoner, I must leave the Consideration of what they say, to your Lordships. They are not upon their Oaths, but yet they are to be believed so far, as your Lordships shall Judge what they say Credible, upon Consideration of all that you have heard. But for the Boy, who hath Contradicted his own Evidence, which he gave upon Oath before the proper Officer; but acknowledgeth that what he Swore then, was true, what Credit is to be given to him, will deserve your Lordships particular Consideration. How he has been prevail'd upon to change his Evidence, I cannot tell, nor what weight it will have with you!

My Lords, I will not spend more of your Lordships time, I know you very well remember, and will carefully Recollect all the Evidence, both for the King and for the Prisoner, and your Lordships will consider that it is a Case of Blood, and if your Lordships think him Guilty, tho' he be one of your own Body, you will adjudge him so, if not, you will acquit him; and therefore I leave the matter to your Lordships just Determination.

L. H. Steward. My Lords, I think now, having heard the Evidence on all sides, your Lordships will think fit to Adjourn to the House of Lords. Is it your Pleasure to Adjourn?

Lords. Ay, Ay.

L. H. Steward. This House is Adjourned to the House of Lords.

Then the Lords returned to their own House, in the same Order as they came into the Court. After some Debate amongst themselves in their own House, they Adjourned till the next Day, and ordered the Prisoner, Counsel, and Witnesses to attend there in the Court.

Die Mercurii Primo Februarii 1692.

The Lords sat all day in their own House, Debating amongst themselves in the Absence of the Judges, who were in the Court, and about eight a Clock in the Evening, the House of Lords Adjourned till the Friday following, the Thursday being Candlemas-day, and no Law-day.

And the Prisoner, Counsel, and Witnesses were ordered to attend in the Court on Friday Morning.

Die

Die Veneris Tertio Februarii 1692.

ABout the Hour of Four in the Afternoon, the Lords (who had till then been Debating amongst themselves in their own House) came in the same Order as the first Day into the Court in *Westminster-Hall*, except only that the Judges were a great part of the Day waiting for them in the Court.

The Lords being seated on their proper Benches, and his Grace the Lord High Steward in the Chair before the Throne, Proclamations were made for Silence, and for the bringing the Prisoner to the Bar in usual manner; and the Prisoner coming to the Bar, and having Saluted his Grace the Lord High Steward, and the Peers, and being resaluted by them, the Court proceeded in this manner:

L. H. Steward. My Lord *Mobun*, My Lords have heard the Evidence on both sides, for and against you; and upon that Evidence some Questions have arisen in point of Law, in which some of my Lords are doubtful. I am therefore by their Lordships Command to propose to your Lordships, my Lords Chief Justices and the rest of the Judges here, to have your Opinions upon a Case stated by their Lordships; and it is this:

In a Case where a Man shall Murder another, Whether all those that are in his Company at the time of the Murder, are so necessarily involved in the said Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found Guilty only of Manslaughter?

To this, my Lords expect you the Judges should give your Resolutions severally one after another, and therefore it is to begin with you, my Lord Chief Justice.

L. C. J. Holt. My Lord, the Question is put pretty long; and I desire, that I may not be mistaken in the Opinion I shall give, that I may have it in Writing, and that I may have a little time to consider of it, because it hath been a Question framed upon very great Consideration and Deliberation: Therefore I would be very well advised before I give an Answer to such a Question, because it is of so great Importance.

L. H. Steward. You must speak out, my Lords; for else I am at such a distance that I cannot hear a word you say.

L. C. J. Treby. My Lords, I make the same humble Request: The Question propounded is long, and the Fruit of great Deliberation among your Lordships; I desire therefore my Answer may be such, as becometh me to it, and to that purpose that I may have a Copy of it, and some time to consider of it.

L. H. Steward. I have it here in Writing, and will give it you, if that will serve the turn.

The Paper was brought by the Black Rod from his Grace to the Judges.

L. C. J. Holt. My Lord, we desire your Lordships will give us time to withdraw, and consider of it among our selves.

L. H. Steward. Your Lordships hear the Motion of my Lord Chief Justice; the Judges desire your leave to withdraw, and consider of the Question among themselves.

Lords. No, no, no.

Then the Judges sitting upon the Wool-Packs, conferred for a little time privately with one another; and then the Earl of *Rochester* stood up.

E. of Rochester. My Lords.

L. H. Steward. My Lord of *Rochester*, What say you?

E. of Rochester. My Lords, the Prisoner doth desire to have a Copy of this Question, it being a Question in Point of Law, that his Counsel may see it.

Lords. Ay, ay, he ought to have it.

A Copy was carried by one of the Clerks to the Bar, and delivered to the Prisoner, and he gave it to Sir *Thomas Powys*, who with Mr. *Hawles* and Mr. *Price*, before assigned of Counsel for my Lord *Mobun* in Matters of Law, stood by him at the Bar.

L. Mobun. My Lords, I desire to know whether my Counsel may speak to this Case before the Judges give their Opinions, it being a Matter of Law, and the Judges Superiour to my Counsel.

L

L. H. Steward. My

L. H. Steward. My Lord, they may be heard to any Matter of Law that is Law singly, the Counsel on either side may be heard to any thing that is a Point of Law only.

L. Mohun. My Lord, I conceive this to be so.

L. H. Steward. My Lord, it is agreed to be so : But, my Lords, I must desire your Lordships leave to go down to the Wool-Pack, or I shall not be able to hear what is said.

Lords. Ay, ay.

Then his Grace came down and seated himself on the Wool-Pack.

Sir T. Powys. May it please your Lordships, I am of Counsel—

E. of Devonshire. My Lords.

L. H. Steward. My Lord Steward.

E. of Devonshire. I think your Lordships have not yet resolved that the Prisoners Counsel shall be heard before the Judges ; therefore I desire they may not begin.

Lords. Yes, yes, it was agreed above.

L. H. Steward. My Lord, it must be either then, or not at all ; and I understand the Resolution of the House to be so.

Lords. Ay, ay.

L. H. Steward. Go on, Sir.

Sir T. Powys. May it please your Lordships, I am of Counsel assigned by your Lordships for this Noble Peer that is now a Prisoner at the Bar : The Question your Lordships are pleased to propound is this :

In a Case where a Man shall Murder another, Whether all those who are in his Company at the time of the Murder, are so necessarily involved in the same Crime, that they may not be separated from the Crime of the said Person, so as in some Cases to be found Guilty only of Manslaughter ?

My Lords, with humble submission to your Lordships, I take it there are many Cases where a Person that is present when a Murder is committed by another Man, shall be equally Guilty of that Murder ; and there are many Cases where a Person that is present when a Murder is committed by another Man, shall be Guilty only of Manslaughter : And there are many Cases where a Person that is present when a Murder is committed by another Man, shall not (with humble submission) be Guilty of any Crime at all.

For the first, There is no Question but if two Persons or more do meet together with Malice prepensed to kill another, and one of them killeth him, and the rest do aid and assist him in doing of it, though the Mortal Wound is only given by one, there is no question but they are all equally Guilty of the Murder with him that gave the Mortal Wound : And it is also as clear, if two Persons meet together to commit an unlawful Act, and during the execution of that unlawful Act, one of them doth kill another Man, the other will be involved in the Guilt of it.

But, my Lords, if several Persons do meet together to commit an unlawful Act, and the design of the Act is totally over, so that the Prosecution of it is quite left off.—

Then there being some Noise and Disorder about the Court, Proclamation was commanded to be made, and was made again for Silence.

Sir T. Powys. My Lords, I say in the second Instance that I was offering to your Lordships, If two Persons or more meet together to do an unlawful Act, but are either disappointed in it, or have totally desisted from it ; and afterwards these same Persons having quitted their design, are together, and a third Person cometh into their Company, though there were Malice between one of those Persons, and that third Person, and upon words, or some other occasion or accident, there should be quarrelling and fighting between those two Persons that bore Malice to one another and one of them is killed, and he that before had joyned in the design of committing an unlawful Act, be only there in the Company, if he doth neither aid nor abet, nor any ways agree to the doing of the thing, the Authorities are it will neither be Murder nor Manslaughter ; and of this I would, with your Lordships Favour, put some Instances.

If two Persons agree together, (as the Case is put in that which goeth by the Name of my Lord *Dacres* Case) to enter into another Man's Park and steal his Deer, this is an unlawful Design ; and if one of them kill the Keeper, and the other no way at all act in the doing of it, yet it will be Murder in the Person that did go along with that other in that unlawful Act : But the Lord *Dacres* Case was accompanied with further Circumstances, for there it did appear that the Lord *Dacres* had agreed before-hand to kill any Person that should oppose them ; there was that particular Circumstance in that Case.

But, my Lords, I take it, with submission, to be very clear, that if such two Persons who had made such an attempt to rob or steal Deer in a Park, should be disappointed, and should leave the Park, and afterwards go to a Tavern or an Alehouse, or any place to drink, having quitted that Design, and some Hours afterwards, a Person cometh in that was not expected or thought of, and a Quarrel ariseth between one of those two Persons who were before together,

ther, and the Man that so came in, and he shall be killed, I take it that the other Person who was present will not be guilty of the Murder, unless he aided, or assisted, or acted in it.

My Lords, I would speak to your Lordships in a Case of this Nature with as good Authority as I could, besides my own poor Reason, to prove to your Lordships that there may be many Cases where a Person may be present at the time when another is murdered, and yet he shall be guilty only of Manslaughter, and in some Cases shall be guilty of no Crime at all.

The Case that I shall cite is out of a Treatise of a very Great and very Learned Man, it is the Book that goeth under the Name of Sir *Matthew Hales* his *Pleas of the Crown*; the Case is this, you will find it in that Book under the Title of *Murder*, Fol. 51. If *A.* and *B.* having Malice prepenſe, meet and fight, and *C.* the Servant of *A.* not acquainted therewith, take part with *A.* his Maſter, and kill *B.* this is Murder in *A.* but only Manslaughter in *C.* So here is an Instance where one is guilty of Murder, and the other only of Manslaughter, when both are present at the time of the Fact committed. The same Law, saith he, it is, if *C.* came in suddenly, and took part with *A.* and killed *B.* In this Case it is Murder in *A.* if there was Malice prepenſed between him and *B.* but only Manslaughter in *C.* who came in suddenly, and actually killed *B.*

My Lords, He goeth further, and saith, If one come by chance where one is killed, and doth not abet, he is neither Principal nor Accessory to that Murder or Manslaughter; so that here are Cases where it is Murder in one, but Manslaughter only in the other; and here are Cases where it is Murder in one, and not so much as Manslaughter, or any Crime at all in the other.

These that I have cited are Cases where one has Malice against another, and he that joyneth in the Quarrel doth not know it. But I will put the Case now, That a Person hath Malice against another, and one happeneth to be in his Company that knoweth he hath Malice against that other Person; if those two that had Malice against one another, do fight, and the one kill the other, yet he that is present will not be guilty of Murder or Manslaughter. For if the Law should be, that Men are involved in the guilt of Murder whenever they are present at a time when one that beareth Malice against another killeth his Enemy, Conversation in the World would be very dangerous: For, my Lords, we know the World is too full of Malice, and there are few Men but have Acquaintance with such as bear Malice to others; but if so be that no Man that is acquainted with one that bears Malice to another, may be in his Company but at the peril of his Life; if his Enemy come in his way, and he happen to kill him in his presence, then no Man that is ever so innocent can be safe.

For I would put this Case to your Lordships: I am walking with a Friend or an Acquaintance that I know hath Malice against another, and that other Man cometh in the way, and they fight, and my Friend killeth that other Man, and I am no way aiding or assisting in it, if that should involve me in the Crime, surely the Law of England would be the most unreasonable and dangerous Law to live under in the World. No doubt but in such a Case the Person that is so present is unfortunate, but he is innocent, he is not guilty.

For to make one guilty of Murder where Murder is committed, it must be either that he doth aid or abet, or some way assist in the killing of the Man, or he must have before that time agreed and confederated with the Person that killed him that he would joyn therein at that time, and he must be there for that end and purpose: For if he never engaged or agreed to the killing of him, nor was there for that purpose, nor at the time did any way act, or joyn, or assist, in the doing of it in those Cases, he is certainly not guilty.

My Lords, I dare not apply any of these things to the present Case, because I suppose your Lordships only propounded this as a Question of Law, and not of Fact; your Lordships are the great Judges both of the one and the other: But what in the Argument or Resolution of this Case your Lordships will find agreeable to the present Case of my Lord now before you, I submit to your Lordships Judgment.

Mr. Hawles. My Lords, I will not repeat what has been offered, the distinction is certainly true that has been made, that there are Cases and Instances in Law where a Man may be guilty of Murder, when he is present where Murder is committed, and he may be guilty of Manslaughter only where another is guilty of Murder; and a Man may be present where Murder is committed, and be innocent both of the one and the other. But this I do venture to say, That there is no Authority in our Law that saith a Person present, when a Murder is committed, must be guilty either of Murder or Manslaughter, it must be according to the Circumstances of the thing, either that he intended to aid or assist in the killing when he was there by agreement before-hand, or must actually aid or assist by some Action or Encouragement.

But, with submission, the Authority of Law is very plain upon this Question proposed by your Lordships, that one Person may be guilty of Manslaughter, and another of Murder at the same time. The Case that hath been put out of my Lord *Hales* was upon his account Authority sufficient to quote, if we would only rely on him: But, my Lords, with submission, the Authority goeth a little higher; yet *Stamford* putteth the Question before the Justices; *A.* that is, the Master, fighteth with *B.* and *C.* the Servant taketh part with his Master, and killeth *B.* *A.* is guilty of Murder, and *C.* only of Manslaughter.

And that Authority is followed afterwards in the Case of *Salisbury*, in *Plowd. Com.* Fol. 100. B. with the Resolution of all the Judges in that Case, That one Man may be found guilty of Murder, and another of Manslaughter, as to the same Fact; and *Stamford* doth expressly say,

as my Lord Chief Justice *Hales* quotes it out of him, That if a Man be present, but do not abet, or assist, or contribute to the thing, he is totally innocent, and neither Principal nor Accessory to the Murder or Manslaughter.

My Lords, We do not find that our Law hath any way prohibited a Man to keep Company with one that oweth another a Spleen; sure there should be some warning given about it, if that was the Law in such a Case. The Law goeth no farther than to caution a Man that he take care he doth not break the Law himself, that he doth not transgress the Bounds set him by the Law.

And it was a very hard Case upon a private Person if it should be otherwise; for no Law compelleth a private Person to part two that are fighting; if he doth attempt it, he doth it at his own peril, as in that Case of *A.* the Master fighting with *B.* and *C.* the Servant taking part with his Master to part them, if *B.* be killed, *C.* is guilty of Manslaughter, though his design was only to part them; because the Law putteth it not upon a private Person to do it; if it did, the Law would protect him for what he did in Obedience to it.

The Law is otherwise in the Case of a Magistrate or a Constable, who endeavoureth to part any Persons fighting, and to keep the Peace; if he happen so to kill a Man, he is totally innocent; but a private Person shall answer for it.

My Lords, I will not trouble your Lordships further; I hope it is plain that Malice is absolutely necessary to make a Man Guilty of Murder, and there is no such thing in this Case stated by your Lordships; and therefore I submit the Matter to your Judgment.

Mr. Price. My Lords, I am of Counsel for this Noble and Young Lord the Prisoner at the Bar: I shall not trouble your Lordships so far as to make any Repetition of what has been said by those Gentlemen that went before me.

But there was a Case in *Plowden* that was cited by *Mr. Hawles* by the Name of *Salisbury's Case*; and I would crave leave to cite the Case that is next precedent; it is in that Book, Fol. 98. There, my Lords, was an Indictment for Murder against several, and among the rest against two, one for giving the Wound and the Stroke, and the other for being present and aiding the other; and they tell you how he was an Aider and an Abettor because he was present, and put the Man upon whom the Assault was made in terror, which terror was the occasion that he could not defend his Life; and made him full as much a Principal as the other that gave him his Deaths Wound. And there, my Lords, he citeth another ancient Record, which is *Quarto Libro Assisarum Placito* 25. of an Appeal of Murder by a Woman for the Death of her Husband against Sixteen; Four whereof were Principals, and the others Accessories, where the words are *Presence, Force and Aid*.

How that will come up to this Case now, before your Lordships, I am not to trouble you with the Consideration of, you who have heard the Evidence are best able to judge of it.

My Lords, By the same Reason and Rule that one Man may be found Guilty of Murder, and another of Manslaughter; one may be found Guilty, and the other not Guilty. As, for Example, if *A.* commandeth *B.* to kill *C.* and afterwards it repenteth him of this Command, and he countermandeth it: yet notwithstanding *B.* doth kill *C.* now *B.* that killed *C.* is Guilty of Murder, but *A.* that countermanded it is not Guilty as Accessory; for his malicious Intent did not continue till the Murdering Stroke was given, and to make Murder there must be a continuing Malice till the mortal Wound given. Cases to this purpose many might be cited; but for a full Authority there is my Lord *Coke* in his Pleas of the Crown Fol. 51.

My Lords, I have no more to say, but that by the same Rule, that one may be found Guilty of Murder and another of Manslaughter for the same Fact, by the same Rule, (as Circumstances may be,) the one may be found Guilty of Murder, and the other not Guilty at all.

L. H. Steward. Have you any more to say that are of Counsel for the Prisoner?

Sir Tho. Powys. No, my Lord, I have nothing further to offer to your Lordships.

L. H. Steward. Have those who are of Counsel for the King any thing to reply to this that is said by the Counsel for the Prisoner?

Mr. Att. Gen. May it please your Lordships, the Question that is proposed, is this

In a Case where a Man shall Murder another, Whether those who are in his Company at the time of the Murder, are so necessarily involved in the said Crime, that they may not be Separated from the Crime of the said person, so as in some Cases to be found Guilty only of Manslaughter.

My Lords, that which with all Submission we would offer to your Lordships is this; We are intrusted by their Majesties to prosecute for the Death of one of their Subjects; there hath been a Case stated to your Lordships by the Evidence which hath been given before you; That which is mentioned in this Paper has nothing certain in it, we are to imagine a Case, and suppose Facts, and then to argue what will be the Law upon those Facts supposed. When your Lordships are pleased to let us know what it is which your Lordships take to be the Fact of the Case before you, we shall be ready to speak to the Law upon that Case, as it becomes us, and as it is our Duty to do; but till the Fact be so stated by your Lordships, and

and declared to be that which your Lordships take to be the Fact of my Lord Mohun's Case, we think it not consistent with our Duty to enter into a Debate upon Suppofals; or upon other Cases than that which is in Judgment before your Lordships.

L. H. Steward. Will your Lordships then please that the Judges give their Opinions?

Mr. Soll. Gen. My Lords, not to trouble your Lordships with with any Repetition of what hath been said, it is my Opinion, as Mr. Attorney General has declared his, That, as this Case is stated, we are bound not to give any Answer to it, unless your Lordships will please to tell us what the Case is upon the Evidence that hath been given before you.

M. Serj. Tompſon. My Lords, I desire to be heard one Word in this Case. I take it for granted, that your Lordships here are Judges both of Fact and Law in this Case, and you are so entirely Judges of it, that no Body can interpose in giving their Opinions in relation to your Judgments, what the Fact is, and from the Fact the Law ariseth. We, that are of Counsel for the King, must needs prejudice him as to the Evidence of the Fact that we have given, except we argue that which is the Fact of this particular Case, and the Law arising thereupon together; which is not so necessary here, where your Lordships are Judges of both; and since you are better Judges of them, than any one else can be. Therefore we do not think it our Duty to argue upon a Case put *ad extra*, and *obiter*; and hope your Lordships will excuse us from Answering what hath been said by the Counsel for the Prisoner; tho I think it might be easily Answered in every Point; but I shall not enter upon the Debating of it. For your Lordships see what Caution we ought to have in relation to our Duty to the Government, which your Lordships will always expect we should perform as exactly as we can. When the Fact that hath been proved in this Case is stated, your Lordships then are the proper Judges what it amounteth to in point of Law, or if your Lordships desire that Counsel should argue it, we shall be ready to do it.

L. H. Steward. Then, my Lords the Judges, what say you to it? my Lords here expect your Opinion in this Case.

L. C. J. Holt. If your Lordships please, I will repeat the Question, which is this:

In a Case, where a Man shall Murder another, Whether those who are in his Company are so necessarily involved in the said Crime, that they may not be Separated from the Crime of the said Person, so as in some Cases to be found Guilty only of Manslaughter?

My Lords, I shall not enlarge upon the Matter, but humbly offer my Opinion to your Lordships as Generally as the Question. I am of opinion, that the Crime of those who are in the Company at the time of the Murder Committed, may be so separated from the Crime of the Person that Committeth the Murder, as in some Cases they are only to be found Guilty of Manslaughter. I suppose your Lordships do not expect that I should argue the Case, or explain my Opinion, upon so general a Question by particular Instances, or run into a Consideration, of the different Cases that may be put upon it, therefore I only deliver this as my Opinion.

E. C. J. Popham. May it please your Lordships, I am of the same Opinion; I think the Import of your Lordships Question is, Whether there may be a Case in which it is possible, that one person who is in the Company of another at the time that he Committeth Murder, may be Guilty only of Manslaughter; and, my Lords, I think a Case may fall out, and may be so Circumstanced, as that it may be possible, that he who did accompany the Murderer, may be Guilty only of Manslaughter. Your Lordships only expect our Opinion, and therefore I will not go about to argue it.

Mr. J. Neale. My Lords, I shall not spend your time to repeat the Question. it hath been so often Repeated; but I am of the same Opinion with my Lords Chief Justices, I must concur with them in it, that there may possibly be such a Case, as that when Murder is Committed where others are in Company, he that doth the thing will be Guilty of Murder, and those that were in Company Guilty but of Manslaughter. There may be such a Case.

E. of Carlisle. My Lords, to save your Lordships time, unless the rest of the Judges differ from those that have spoken their Opinion, I think you need not trouble them to speak to it severally.

Mr. B. Tutton. We are all of the same Opinion, my Lords, we cannot differ in Opinion upon such a Case.

E. of Monmouth. My Lords, I humbly beg your Lordships leave to propose a Question to my Lords the Judges for their Opinions.

Lords. Ay, ay.

L. H. Steward. What is your Question, my Lord of Monmouth?

E. of Monmouth. My Lords, the Question is this,

A Conscious of an Animosity between B and C, A accompanieth B where C happeneth to come, and B killeth him, whether A, without any Malice to C, or any actual Hand in his Death, be Guilty of Murder?

L. H. Steward. Pray, my Lord, be pleased to hand up your Paper, that my Lords the Judges may see it.

E. of Mulgrave. My Lord.

L. H. Steward. What saith your Lordship, my Lord of Mulgrave?

E. of Mulgrave. I only desire, that the Prisoner at the Bar, if he hath a mind to it, may have his Counsel speak to this Question, before the Judges answer it, as was done in the other Case.

L. Mobun. I desire, my Lords, my Council may have the Question in Writing.

L. H. Steward. Make my Lord a Copy of it; one Copy was delivered by the Clerk to the Prisoner, and by him to his Council, and another to the King's Council; and the Original was delivered to the Judges.

L. Mobun. Is it your Lordship's pleasure that my Council may be heard to this Question?

Lords. Ay, ay.

Sir T. Powys. My Lords, the question that this Noble Peer hath been pleased to propose, is this:

A Conscious of an Animosity between B and C, A accompanieth B where C happeneth to come, and B killeth him, Whether A, without any Malice to C, or any actual hand in his Death, be Guilty of Murder.

My Lords, with humble submission to your Lordships, I take it in this Case the Law is very clear, That, as this Case is put, he that was in company when the Murder was committed, under these circumstances, is not guilty of any Crime: But without question he is not guilty of Murder.

My Lords, Malice is so absolutely necessary to Murder, either express, or that which the Law calleth malice implied, that there can be no Case where Murder can be committed without it; no Indictment can ever be good, unless *Ex malitia sua precogitata* be alledged in it; because this is absolutely essential to Murder.

But, my Lords, if so be a Man that is present, not designing, or foreseeing that unhappy accident that doth fall out between his Friend with whom he is in company, and another person that came accidentally to them, tho' malice was between those two, God forbid he should be guilty, if he did neither foresee it, nor any way acted in it.

He that is present must be involved in the Crime, either by some way aiding, abetting, or contributing to the death of the Man, or there must be some precedent combination and agreement to do that act which at that time was done; and that must be plainly and clearly proved: For his not acting, his standing by innocently and harmlessly, is so great an evidence of his not concurring, that it must be a mighty proof of malice that must convict that Man of a preceding agreement to do the fact; and if it doth not appear plainly and manifestly, that he agreed before hand, or acted then, and abetted and contributed to the thing, I say, unless this be clear and manifest, It is no question, but in Law, he is innocent of the Murder.

For in such a Case it is plain he never had prepened Malice express, nor is their any Evidence of that which the Law calleth Malice implied; which is when a Man killeth another without provocation, that is, when he that doth the act had no provocation, or killeth an Officer in the prosecution of his Office, That the Law calleth Malice implied. But then that is never but in the person that did the act, and not in the persons who were present at that time, unless before hand they had agreed to do that act; and therefore they cannot be Guilty of Murder.

And this, my Lords, is what I humbly offer to your Lordships consideration, in relation to the Case, put by that Noble Lord.

Mr. Hawles. Will your Lordships please to favour me with a word on the same side, with *Sir Tho. Powys*, and I shall be very short in the matter.

The Kings Council did complain that the last Case was not fully stated, and therefore they could not speak to it; My Lords, with submission, this Case is fully stated, there was nothing in the other Case said of Malice between him that was Murdered, and him that killed him; but here it is said, That the person present was not conscious of any Malice, nor had any manner of hand in the doing of it: And then with submission, my Lords, upon the Question, Whether he was Guilty of Murder? if this was a Special Verdict, found by 12 Men, and referred to the Judges, I do not at all doubt but their Judgment would be, That he was not Guilty. For tho' in a Special Verdict, where Malice is not found, the Prisoner would be acquitted; yet if it be expressly found in the Verdict that he did not know of any Malice between them, then, with submission, there would be no colour to find him Guilty of any thing.

A Lord interrupted him, and said, The Case was put of one Conscious of the Malice.

Mr. Hawles. My Lords, I beg your pardon, I confess it is so, I did mistake it; but with submission, that will not much alter the matter. If he was Conscious, that will not make him Guilty; for that Consciousness of his is no matter of Crime, if he did not act any thing, or agree to do any thing before hand, but only was in company with the person that had Malice against another, that will not make him Guilty of any Crime whatsoever.

Mr. Price. My Lords, I shall speak but one word to it; I observe the great stress of the Case lieth upon the word being Conscious of the Malice between B and C, now as to that, with submission, I conceive, and am of opinion, that as this Case is, A is not Guilty of Murder; and for Authority, I shall rely upon the Cases in *Stamford's Pleas of the Crown*, fol. 40. And my Lord Coke's *Pleas of the Crown*, fol. 51. The Case is this, If a Man happen to be in company where Murder is committed, or Felony, and he cometh not there on purpose, or by confederacy to do it; In that Case, tho' Murder be committed, and he doth not endeavour to part them, this is no Murder in him, for he is punishable by Fine and Imprisonment, if an Infant; but if he was an Infant, he is not punishable at all, for he is not Constant of the Law in such a Case. But in this Case, except Malice prepened, express, or implied, be proved, without doing any thing, or abetting, he is not Guilty of Murder.

L. H. Steward. Gentlemen, you that are of the King's Council, have you any thing to say to this Question?

Mr. Att. Gen. My Lords, here is a Case put, which I hear from the Council on the other side, is certainly enough stated. My Lords if this be stated to us, as that which is agreed to be the fact of the present Case, we are ready to speak to it; but if this be not taken by your Lordships, to be my Lord Mobun's Case, and so such stated to us, then we must humbly beg to be excused. I know your Lordships will be

tender

render in this matter, and as well pleased that we hold to that which we conceive to be our Duty in reference to that Station in which we serve the King, as with any forwardness in us to answer Questions: And therefore we beg your Lordships Excuse for saying nothing more to it.

E. of Monmouth. My Lords, I did not propose it as a Case stated and agreed by your Lordships, it is only a Case particularly stated for my own satisfaction.

E. of Mulgrave. My Lords.

L. H. Steward. My Lord of Mulgrave.

E. of Mulgrave. If your Grace please, let the King's Council know, that they are not to ask you the Question, Whether the Lords are agreed what the Case is? They are to answer such Questions as are proposed, and not to ask any such Question.

Mr. Att. Gen. My Lords, with that noble Lord's Pardon I did not ask any Question; all that I said was, That when a Case is agreed to, and stated by your Lordships to be the present Case, we would be ready to speak to it, and till we receive that Intimation from your Grace, we shall not think our selves excused from giving any Answer to other Questions.

L. H. Steward. My Lords, I think we must go on, and if any Lord has any more Questions to propose, he may propose them.

E. of Nottingham. My Lords.

L. H. Steward. My Lord of Nottingham.

E. of Nottingham. Your Lordships will not certainly require of the King's Council to answer any Questions that they think improper for them to speak to; but when a Question hath been proposed by any Noble Lord, to which the Council for the Prisoner hath been heard, and the King's Council think not fit to speak to it, there is nothing more requisite, but that in the presence of the Prisoner (as the Law requireth it should be) you do demand the Opinion of the Judges.

L. H. Steward. What say you to it my Lord-Chief-Justice?

L. C. J. Holt. If your Lordships please, I will repeat the Question.

A. conscious of an Animosity between B. and C. A. accompanieth B. where C. happeneth to come, and B. killeth him; Whether A. without any Malice to C. or any actual hand in his Death, be guilty of Murder?

And, my Lords, as this Case is stated I do conceive, that *A.* is not guilty of the Murder, for it appeareth the meeting was casual, and there was no design in *A.* against *C.* and therefore though *A.* did know of the malice between *B.* and *C.* yet it was not unlawful for *A.* to keep company with *B.* but he might go with him any where if it was not upon a design against *C.*

Therefore I take it as this Case is put, that *C.* came accidentally into the Company where *A.* and *B.* were, and then without any design in *A.* *B.* killeth *C.* This is not murder, indeed no Offence in *A.*

L. C. J. Treby. If it please your Lordships, as this Case is put, I think it is not an Offence of murder or manslaughter in *A.* it dependeth upon the Words as the last Question did. For the former Question was put generally, Whether there might not be a Case found or framed, wherein one might be guilty of murder, and the other of manslaughter. So here it dependeth upon the Word [*Happeneth*], which I take to signifie, (as my Lord doth) a casual coming in to, or being in the Company.

Now my Lords, when *B.* had communicated to *A.* this malicious purpose to kill *C.* it stood uncertain, whether he to whom *B.* communicated it did consent; if he had any way declared his consent, that he would go to such a place, and stay there with *B.* for such a purpose, then it had been murder in both; but if he merely was silent, and only kept *B.* company, perhaps with an intent to dissuade him from it, or possibly without any consideration at all, and then the Person intended to be killed accidentally came by, and is killed by *B.* *A.* doing nothing towards it in that case, it is neither murder nor manslaughter in *A.*

Mr. J. Nevill. My Lords, as this case is, it seemeth to be meer accidental the coming of *C.* into their company, for it is said, *Happeneth to come*; and so though *A.* did know that there was an Animosity between *B.* and *C.* yet declaring no intent of going with *B.* to that purpose, but coming with *B.* into a place where *C.* accidentally came or happened to be, between whom and *B.* there is a quarrel, and *C.* is killed; I do not take it at all that *A.* is concerned, but merely as any other person that accidentally was there, and in that case he cannot be guilty of murder or manslaughter, or any other crime.

E. of Devon. My Lords.

L. H. Steward. My Lord Steward.

E. of Devon. If the rest are of the same Opinion, you need not give them any further trouble I think.

Judges. We are of the same Opinion.

E. of Scarborough. My Lords.

L. H. Steward. My Lord of Scarborough.

E. of Scarborough. I humbly beg your Lordships Leave, that I may offer a Question to your Lordships, to be proposed to the Judges, and the Question is this:

Whether if A. heard B. threaten to kill C. and some days after A. shall be with B. upon some other Design, where C. shall pass by, or come in the place where A. and B. are, and C. shall be killed by B. A. standing by without contributing to the Fact; his Sword not then being drawn, or any Malice ever appearing on A.'s part against C. whether A. will be guilty of the Murder of C?

L. H. Steward.

L. H. Steward. Pray, my Lord, give your Paper to the Clerk.

Which was done.

L. H. Steward. My Lord *Mohun*, doth your Lordship desire that your Council may have a Copy of this Question, and be heard to it?

L. Mohun. Yes, my Lord, if you please.

Then a Copy was given to him for his Counsel, and another to the King's Counsel, and a third the Judges had.

Sir T. Powes. Will your Lordships please to favour me with a few Words, and I shall trouble your Lordships very little, because I have said that already to your Lordships which will be an Answer to a good part of this Case? The Case is this:

Whether if A. heard B. threaten to kill C. and some Days after A. shall be with B. upon some other Design, where C. shall pass by, or come in the place where A. and B. are, and C. shall be killed by B. A. standing by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on A's part against C. Whether A. will be guilty of the Murder of C?

My Lord, with humble submission we do take it, that the Law in this Case is likewise very clear; that *A.* is not guilty of Murder: For as this Case is put, there doth not appear (nay, the contrary doth appear) that he had any manner of Malice to this Man that was killed, nor any Hand in the killing of him: And as I said before to your Lordships, (and I hope the Judges will verifie us in that, and your Lordships will be of the same Opinion) there can be no Case wherein a Man shall be guilty of Murder, but where there is Malice against the Person so murdered, or some way abetting and assisting in the killing of him, or what the Law calleth *Implied Malice*.

But in this Case that is now put, there is neither express Malice, but the contrary appearing, nor any implied Malice, which is by Construction of Law the Person that was by, and heard *B.* threaten *C.* before, yet doth no way aid or assist to the killing of him; and therefore I think, with submission, the Law, and all our Law-Books, and Reason it self, are clear for the acquitting of *A.* in this Case.

Mr. Hawles. My Lords, I think the Resolutions that have been given in the Cases before, will warrant us in our Opinions in this, that *A.* is not guilty of Murder in this Case: For I think it was said by the Judges, That notwithstanding a Man knew another had a Design upon a third Person, yet it was lawful to keep Company with him, if he did not joyn with him in the Design. Now here it doth appear, that *A.* keepeth *B.* Company, but not upon that Design, for he had no Malice to *C.* nor had any Hand in his Death, and *C.* cometh in by accident into the Company or place where they are: With submission, my Lords, *A.* is totally Not Guilty, for there was no Malice in him; and though he was there, he was there upon his lawful Occasions; and if they two fight, the best course he can take is to stand still, and do nothing; and therefore he cannot be guilty of Murder or Manlaughter.

Mr. Price. My Lords, I have but this Word to say: His being there was lawful, *C.* cometh there but by accident, and when they two do fight, his not parting of them, doth not make him guilty of the others Death; here is no Malice, therefore he is not guilty of Murder, and he hath done nothing towards the Fact, therefore he is not guilty of Manlaughter.

L. H. Steward. Will you say any thing to this Question, you that are of the King's Counsel?

Mr. At. Gen. My Lords, we are ready to speak to the present Case, when we receive Intimation from your Lordships that what is put is the present Case.

Mr. Serj. Tomson. My Lords, if they put a Case of Fact to be argued as a Case of Law, and from time to time alledge Facts which are not in the Case before us, we cannot speak to them.

Mr. At. Gen. My Lords, we are ready to argue the Case of the Prisoner at the Bar when it is stated; but till then, we humbly beg your pardon: We think we are not bound to speak to other Cases.

L. H. Steward. My Lord Chief Justice, What say you to it?

L. C. J. Holt. If your Lordships please, I will put the Question:

Whether if A. heard B. threaten to kill C. and some Days after A. shall be with B. upon some other Design where C. shall pass by, or come in the place where A. and B. are, and C. shall be killed by B. A. standing by without contributing to the Fact, his Sword not then being drawn, or any Malice ever appearing on A's part against C. Whether A. will be guilty of the Murder of C?

My Lords, I am of Opinion that *A.* in this Case will not be guilty of Murder or Manlaughter: For it doth not appear by the stating of the Case, that *A.* did consent to the Design, or in any wise contribute to the Fact.

L. H. Steward. My Lord Chief Justice *Treby*.

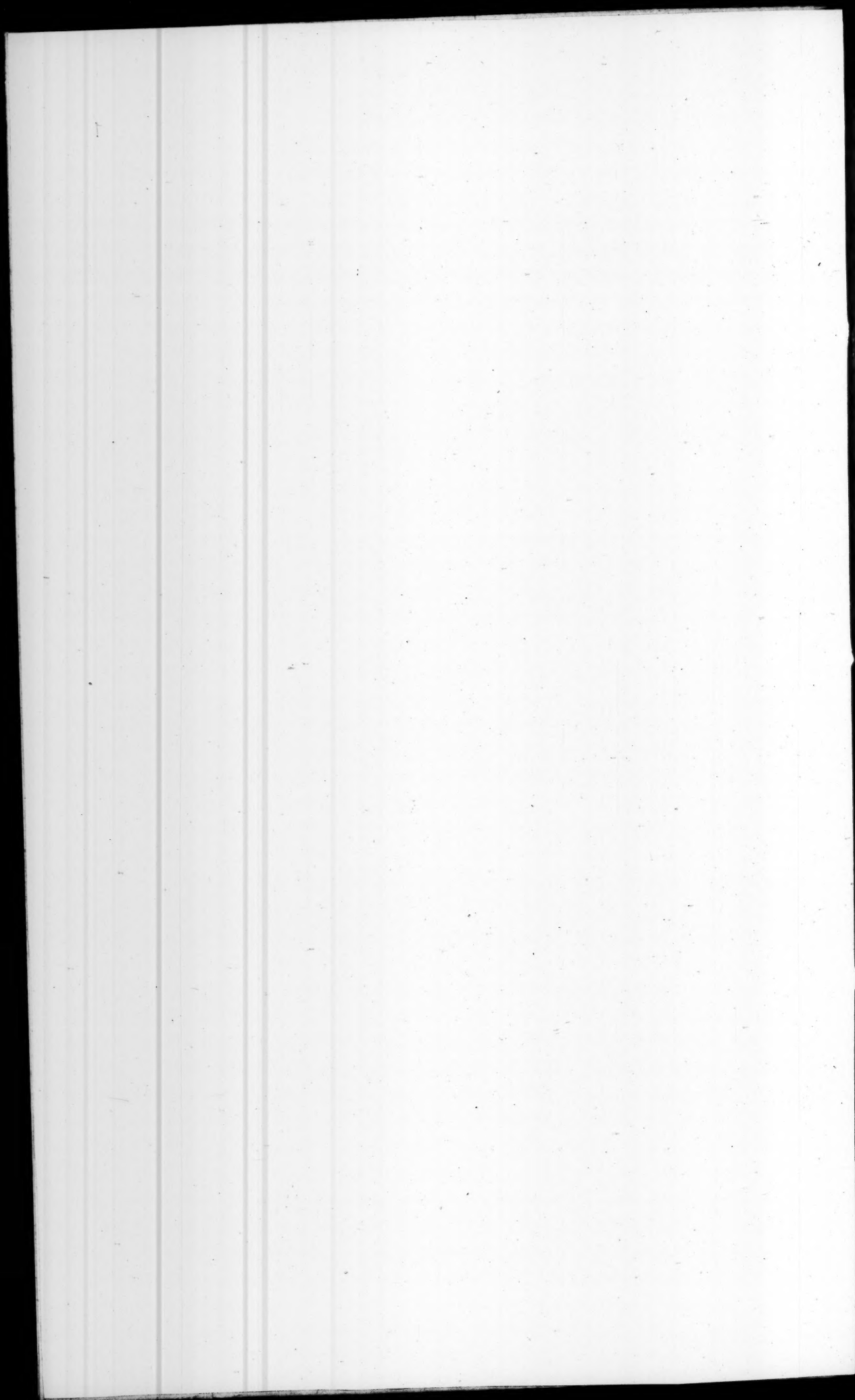
L. C. J. Treby. My Lords, I take this Question to be the same in substance as to the Point in Law with the last; and am of Opinion that *A.* is not guilty of Murder or Manlaughter.

Mr. F. Nevil. I am of the same Opinion.

L. H. Steward. If all the rest of you are of the same Opinion, you may spare your selves the trouble of delivering it particularly.

Judges. We are all of the same Opinion.

Then



Then there was a little pause; and afterwards the Earl of Kingston stood up.

E. of Kingston. My Lords, I desire for my own private Satisfaction to know,

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, who happeneth to be killed, (when the Person who knew of the Design is present) be guilty in Law of the same Crime with the Party who had the Design and killed him, though he had no actual Hand in his Death?

L. H. Steward. My Lord, I must crave your excuse, there is another Question to precede this.

E. of Devon. My Lords, I had a Question to ask; but it being much to the same purpose with the two last, I think it better to wave it, for there hath been given an Answer to it already.

L. H. Steward. Then, my Lord of Kingston, will you be pleased to deliver up your Paper to the Table?

Which was done.

L. H. Steward. My Lord Mobun, Do you desire your Counsel may have a Copy of this Question?

E. of Mulgrave. My Lords.

L. H. Steward. My Lord of Mulgrave.

E. of Mulgrave. I desire your Grace will hear the Question. Pray let it be read, that we may know what it is.

L. H. Steward. Read it.

Cl. of Cr. Readeth.

Whether a Person knowing of the Design of another to lie in wait to assault a third Man who happeneth to be killed, (when the Person who knew of the Design is present) be guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual Hand in his Death?

E. of Mulgrave. My Lords.

L. H. Steward. My Lord of Mulgrave.

E. of Mulgrave. I think, my Lords, in a Case of this Nature we cannot be too exact: I humbly conceive that is not a proper Question to be put, therefore I move that we may adjourn to consider of it, whether it shall be put or not, if that Lord do insist upon it.

L. H. Steward. My Lord of Kingston, Doth your Lordship insist of this Question being put?

E. of Kingston. Yes, my Lords, I do, and I must insist upon it; for I think I cannot give my private Opinion in this Case without Satisfaction in it.

Lords. Then Adjourn, Adjourn.

L. H. Steward. This Court is Adjourned into the House of Lords.

Then the Lords went back to their own House in the same Order, and debated this Matter amongst themselves for about an Hour.

Between Six and Seven in the Evening the Lords returned into the Court in the same Order; and being seated on their Benches, and his Grace in the Chair before the Throne, they proceeded thus:

First, Proclamation was made for Silence.

L. H. Steward. My Lord Chief Justice, and you the Judges——

L. Cornwallis. My Lords.

L. H. Steward. My Lord Cornwallis.

L. Cornwallis. My Lord, Before your Grace giveth any Directions, I think you should call the Prisoner.

L. H. Steward. Is not the Prisoner at the Bar?

L. Cornwallis. No, my Lord.

L. H. Steward. Call for the Prisoner.

Then Proclamation was made for the Governor of the Tower to bring forth the Prisoner, and he was brought as before.

L. H. Steward. I am to let you that are of Counsel for the King, and the Prisoner know, That if any Question be put by any of my Lords, which any of you shall not think fit to give an Answer to, my Lords will take it for granted either on the one part or on the other, that the Reason is, because it is not necessary to give any Answer; and then they will proceed to have the Answer of you, my Lords the Judges. And now for my self, I must desire your Lordships will give me leave to come down again to the Wool-Pack.

Lords. Ay, Ay.

Then his Grace came down, and seated himself on the Wool-Pack.

L. H. Steward. My Lord of Kingston, Will you please to propose your Question?
 E. of Kingston. My Lord, my Question is this, which I desire the Judges Opinion in for my own Satisfaction:

Whether a Person knowing of the Design of another to lie in wait to assault a third Man, who happeneth to be killed, (when the Person who knew of the Design is present) be guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual hand in his Death?

L. H. Steward. My Lord Mobun, Do you desire your Council may have a Copy of that Question?

L. Mobun. Yes, if your Lordships please.

L. H. Steward. Read it aloud, and deliver a Copy to my Lord.

The Question was Read by the Clerk of the Crown, and one Copy of it delivered to the Prisoner's Council, and another to the King's Council, and a third to the Judges.

L. Mobun. Is it your Lordships Pleasure, That my Council be heard to this Case?

Lords. Ay, Ay.

Sir T. Powyes. The Case that is put my Lords is this:

Whether a Person knowing of the Design of another to lye in wait to Assault a third Man, who happeneth to be killed, (when the Person who knew of the Design is present) be guilty in Law of the same Crime with the Party who had the Design and killed him, though he had no actual hand in his Death?

My Lords, I shall not insist upon the same Priviledge that the King's Council did even now do, to decline speaking to any Case that your Lordships shall put. But I hope your Lordships will permit me to say, That I do not admit this to be the case of my Lord Mobun, and I hope that my speaking to it shall be not taken as any admission that this is his case. But as this Case is put with that allowance, that I speak to it not as his Case, I do take it, that this Person thus present at the killing of the third man is not guilty of murder.

My Lords, there are but two Circumstances in the Case that can draw him into any danger:

The *First* is, That he knew another Person had a design to make an Assault upon a third man And,

The *Second* is, That he who had the knowledge of this Design, was also present when upon that Assault that third Person happened to be killed.

But, my Lords, I do take it, that in this Case neither of these Ingredients will make this man guilty of murder.

As to the *First*, The knowing that a man has a design to make an Assault upon a third Person, that taken by it self is no Crime. It frequently happeneth, that a man heareth what others threaten, that they will assault and beat such an one, I may know that another doth so design, and that he will watch his opportunity for the doing of it, and yet my meer knowledge, my meer knowing of it, doth not make me guilty of any Crime, tho I do not endeavour to prevent it.

I confess, it doth become a good man upon such knowledge to do all that he can to prevent such beginning of Mischief, but if he doth not prevent it, that is no Crime.

The *Second Matter* is, That tho he did know of this Design, he was also so unfortunate as not prevent it; nay more, he was present when the Assault was made, and that Assault is attended with the Death of the Party assaulted, but he never acted in it, never abetted it. Take all this together, and yet he is not guilty of Murder, nay perhaps not of any Crime, at most only of a Misdemeanor.

For it is no more than this: I knew another Person did intend to assault a third man, I was present when he did assault him, but did not prevent it either before he made it, tho I knew he designed it, nor whilst he was making the assault upon which the man is killed. That is all that this thing doth amount to, and no man can say with humble submission, That this can involve me in the crime of murder.

It is true if I command A. to beat C. and he according to my command doth fall upon him, and so beat him, that he dieth; this maketh me guilty of his Death, because what is done by that Command of mine is my doing; therefore tho I only commanded him to beat him, yet he dying upon that beating, which was made pursuant to my Command, I that gave the Command must answer for it, and am guilty of all that followeth thereupon.

But if I only know, that another Person designeth to do such a thing, and am neither Commanding, Aiding, nor Assisting in the doing of it, but only present at the time, but did not interpose to prevent it; that doth not make me such an Agent in this matter, as that I should be any ways guilty of his Death if it doth ensue. I take it this Case cometh to no more then this, there is no malice precedent, no sort of abetting, aiding, or assisting, but a bare declining to prevent the Assault, and that will not amount to any thing that is Capital; if it be any Offence, it can only be construed as a Misdemeanor, but neither Murder, nor Manslaughter.

Mr. Hawles. If your Lordships please to spare me one word on the same Side: It is no manner of Crime for a man to know, that another doth design to lie in wait to murder a third Person, much less to assault him.

There is but one Case that I know of in Law, where the knowledge of an ill Design without discovery and endeavour to prevent it, is an Offence, and that is in the case of High-Treason; and yet even there the bare knowledge doth not make a man guilty of Treason: And it was a hard case if it should, for it is

not

not in the power of any innocent man to say, that he shall not know of an ill Design, either of Murder, or High-Treason.

It is true, in the Case of Treason, if I conceal it, it is a Crime, but it is not Treason, but only misprision of Treason; which is forfeiture of Lands, and perpetual confinement in Prison during my Life: But it doth not extend to any other matter; for tho' I know, and do and conceal it, that is no manner of Crime at all, tho' that is further than this Case putteth it; for it only goeth to the knowing, and not to the concealing.

And, my Lords, with submission, this would be likewise a hard Case if the Law was otherwise; For sometimes a Man may apprehend he knoweth of a design, when there is no such thing designed. Your Lordships know where a certain Gentleman said, he would kill any Man that did oppose him, when he neither designed it, nor executed any such purpose: And in such a Case, tho' it had been well done of the person that heard of the design, to have gone and informed the third person (and if he had, I believe your Lordships would have had no occasion of a Tryal at this time, for it might have been determined another way) yet his not doing it is not a Crime.

Then further, my Lords, a person's being present at such a time is his misfortune, but not at all his fault; he can no more help the action, than he could the ill design, or his own knowledge of that design. It is a complicated misfortune, both to know it, and be present at the execution of it; but without having any hand in it, it can be no offence: For, indeed, it is as to him no more than a Man's being present that did not know of such a design. And if this was a Special Verdict, upon an Indictment for Murder, I doubt not but, my Lords, the Judges would give their Judgment, that the Defendant was not Guilty.

Mr. Price. I have only this word to add, my Lords; I do take it, That the bare privy of this design, with the bare personal presence of him that was so privy when this act is committed by another Man, will not amount to make him principal; and so he will not be Guilty of murder: For we find, that to make a Man principal in murder, there must be aiding and abetting, and only being present will not do it. Now the aiding and abetting must be, either by commanding, or assisting, or putting the person assaulted in terror and fear, or he must be there ready, and designing to assist in case of opposition. These are facts that the Law requireth to the making a Man principal in Murder; and bare privy, with a mind to Assault, and bare presence, when upon the Assault the Man is killed, will not amount to make a Man Principal, and consequently Guilty of Murder.

L. H. Steward. Mr. Attorney, Do you think fit to say any thing to what the Council for the Prisoner have alledged?

Mr. Att. Gen. No, my Lord.

L. H. Steward. Nor no other of the King's Council?

Mr. Sol. Gen. No, my Lord.

L. H. Steward. Are ye all of that mind?

Mr. Serj. Tremaine. I am of that mind, my Lord.

Mr. Serj. Tomson. And so am I.

L. H. Steward. Then, my Lord Chief Justice, what say you to it?

L. C. J. Holt. If your Lordships please, I will repeat the Question:

Whether a person knowing of the design to lye in wait to Assault a third Man who happeneth to be killed (when the person who knew of the design is present) be Guilty in Law of the same Crime, with the party who had the design, and killed him, tho' he had no actual hand in his death?

My Lords, I am of opinion this is no Murder nor Manslaughter, he that knew of the design of Assaulting, only happened to be present when the assault was made, and the party killed; but if he did not contribute to his death, he is not Guilty of Murder. This Question is much to the same effect with the Question that was put before: But if the person that knew of this design did advise it, or agree to it, or lay in wait for it, or resolv'd to meet the third person that was killed, with him that killed him, it would be Murder: But as this Case is put, it is neither Murder nor Manslaughter.

L. C. J. Treby. My Lords, I am humbly of the same opinion as this Case is put. The person to whom this matter of the design to lye in wait to assault another is communicated, is only passive; he only receiveth the notice of it, and doth nothing towards the fact. But if by going to the place, directing, persuading, promising assistance, or encouraging, he had discovered his consent, or had layen in wait himself, then he had been guilty: But if he did nothing, but only received this notice, and then the person assaulted happened to come by, and is killed in his presence, this is but an accident, and doth not involve him in the murder. And I think, in effect, it is the same with the second Question that was proposed. There it was put, of one that had an animosity against another, here it is put, of one that lay in wait to Assault him; There it was put, of Accompanying him to the place where the party was killed; here it is, of his being Killed in his Presence: So that the Resolution must be the same in this Case that was given in that.

Mr. J. Nevill. My Lords, I shall not spend any of your Lordships time, I am of the same opinion with my Lords that spoke before me, and for the Reasons that they have given.

L. H. Steward. If they are all of the same opinion, I suppose your Lordships will not require their particular delivering it.

Lords. No, no.

Judges. We are all of the same opinion.

L. H. Steward. I am now to know of your Lordships, whether there be any of you that have any more Questions to ask?

E. of Nottingham. My Lord,

L. H. Steward. My Lord of Nottingham?

E. of Nottingham. The Question that I have to propose to your Lordship is the same that hath been already offered to you, but with some little variation; For I do find, my Lords, the Judges do interpret this persons being killed in the presence of another, to be upon an accidental meeting. I would propose to your Lordships, that the Judges may answer, what the Law would be, when a person knowing of the design of another to lye in wait to assault a third Man, and accompanieth him at that time that that design is to be Executed, Whether it be the same Crime in the one as in the other?

L. H. Steward. If your Lordship have your Question in Writing, pray deliver it in.

E. of Nottingham. I will immediately, my Lord.

Then he did put it in Writing.

L. H. Steward. Will your Lordship please that it may be handed to the Table.

Which was done.

L. H. Steward. Read it.

Cl. of Cr. Readeth.

Whether a Person knowing of the design of another to lie in wait to Assault a third Man, and accompanying him in that design, if it shall happen that the third Person be killed at that time in the presence of him who knew of that design, and accompanied the other in it, be Guilty in Law of the same Crime with the Party who had that design and killed him, though he had no actual hand in his Death?

L. H. Steward. My Lord Mohun, Do you desire a Copy of this?

L. Mohun. Yes, if your Lordships please.

L. H. Steward. Carry my Lord one.

Then Copies were delivered as before.

L. H. Steward. Well Sir, What say you to that Question?

Sir Tho. Powyes. The Case that is now propounded is this:

Whether a Person knowing of the Design of another to lie in wait to Assault a third Man, and accompanying him in that Design, if it shall happen that the third Person be killed at that time in the presence of him who knew of that Design, and accompanied the other in it, be Guilty in Law of the same Crime with the Party who had the Design, and killed him, though he had no actual Hand in his Death?

My Lords, I shall not (though I am of Counsel for this Noble Lord) decline or refuse Speaking to this Question still, my Lords, with that saving which I know your Lordships will allow me, that I am very far from admitting that this which goeth much further than the last Case, is the Case of my Lord Mohun. Whether your Lordships will permit the Kings Counsel who have declined Speaking to any of the Cases hitherto, as not being, as they pretend, my Lords Case; Now to speak to this which we do much less admit to be so, than they did the others, will be in your Lordships Pleasure to determine, but I shall not decline to speak to it with that Saving.

And truly, my Lords, with humble Submission, I do take it, that as this Case is put, the Party who accompanied the other in such manner as in this Case it is stated, is not Guilty of Murder: I know it was intended by that Noble Lord who proposed the Question, that it should be admitted that beyond all doubt the Fact was so as here it is stated; and then the Question is, What the Law will be where the Fact is thus admitted and agreed to on all sides: And if there was such a Case, (for my Lords I speak to this as a Case at large) if there was such a Case where the Fact is beyond all Question made out to be so as it is here Stated; yet I take it that in a Case of Life, which is the Case now before your Lordships, the Party will not be Guilty of Murder.

My Lords, here is a further Circumstance added in this Case than what hath as yet been inserted into any of the other Cases, that is, That the Party knoweth of the design of him that he accompanieth to Assault a third Man, and doth accompany him in this design, and then is present when the design is executed; yet all these things together, will not, as I humbly conceive, with Submission to your Lordships Judgment, make this to be Murder, because it doth not appear in this Case that he did accompany him with an Intention to execute this matter, or to aid and assist him in the doing of it: There is no such Circumstance in the Case, and 'tis that which must be the thing that will draw him in to be Guilty of Murder.

For if two Men (to put a Case which I hope I may do with your Lordships Pardon to explain my self) should be Travelling upon the way, and one of the Persons should acquaint the other, that at such an Inn there is a Servant that he is resolved to Beat, and this Person that has this matter imparted to him doth accompany the other in the Journey, (which I take it answereth the knowing the Design and accompanying him in the Design) and when they come to the Inn the thing is executed in the presence of the Party that knew of such a Design, and it doth fall out that Death doth ensue upon it, unless he that did accompany him did some way or other act, contribute, or assist in the doing of it, it doth still remain a thing where-

of he had only Privy and Knowledge, which he had done well, (especially in regard of the Consequence of it) to have prevented. And he is highly blameable, that he would accompany a Man who had such a Design to do an unlawful Act, and did not prevent him from executing of it.

All this is blameable in him, but it will not, as I conceive, be Murder in him; for I must insist upon that in point of Law, that to make any thing Murder there must be prepensed malice in the person that is to be found Guilty of it, or some precedent Agreement to do it, or some Act of Aiding or Assisting of the Person who doth it; but as this Case is, here is nothing of Malice doth appear, or that the Person who accompanied the other in his Design had any sort of Malice against the Person Assaulted. And it doth not appear, that he did any way assist in the doing of it. He was present at the time when the other Executed the Design he had imparted to him, but he never joined in it, nor had any malice precedent, nor did assist or do any Act at that time; and therefore I take it in this Case (which, as I said,) I am very far from admitting to be my Lord *Mohun's* Case, that the Party who accompanied the other is not Guilty.

Mr. *Hawles*. My Lords, Tho we who are of Counsel for this Noble Lord, the Prisoner, do not think this Case that is put to be his Case, for with Submission, if the Indictment be looked upon, your Lordships will find—

L. H. *Steward*. Sir, I must stop you there, you are not to tell my Lords what your Opinion is as to the Fact, for of that my Lords are the Judges, you are to take the Case fairly, as a Case put, and you are to inform my Lords what the Law, in your Opinion, would be upon such a Case. It is not before you, but before my Lords only, to consider whether this be Applicable to my Lord *Mohun's* Case or not.

Mr. *Hawles*. If your Lordships please, I shall observe your Directions in that Matter, and with humble Submission this is not Murder in him who accompanieth the other, as this Case is put; for in every Case of Murder the Indictment must be either that he actually killed him, or aided and assisted him that did kill him. But, with Submission, there is neither of these in this Case.

He did know of the Design, that is no Crime he did accompany him in it, that is, he bore him Company at that time, he went with him to the place where he Executed his Design, but he did nothing when he came there to further, promote, or encourage the Execution of it; and therefore it can never make him Principal, nor Accessory to the Murder.

Mr. *Price*. I shall only say this, my Lords, that I take it, that the bare going with him in this Design without doing any Act, doth not involve him in the Confederacy, as Aiding and Abetting. Something must be done or said, either he must assist or advise, or otherwise he cannot be Principal, and consequently cannot be guilty of this Murder.

L. H. *Steward*. Mr. Attorney, have you any thing to say to this?

Mr. *Att. Gen.* My Lords, we that are of the King's Counsel do not desire to be heard to this Case neither.

L. H. *Steward*. I do not hear you, Sir, what you say.

Mr. *Att. Gen.* My Lord, we do not desire to speak to it.

L. H. *Steward*. Then my Lord Chief Justice.

L. Ch. J. *Holt*. This is the Question:

Whether a Person knowing of the Design of another to lie in wait to Assault a Third Man, and accompany him in that Design, if it shall happen, that the Third Person be Killed at that time in the presence of him who knew that Design, and accompanied the other in it be Guilty in Law of the same Crime with the Party who had that Design, and Killed him tho he had no actual Hand in his Death?

My Lords, as for this last, I desire to make some Observations upon the Words, *Had no actual Hand*. By these Words, I suppose, is meant he did not draw his Sword, or lay any Hand upon the Person slain, or give any actual Assistance to the other Person at that time when the Third Man is slain, but was only in company, and a looker on.

E. of *Nottingham*. My meaning in those Words is. That with his Hand he gave no Stroke.

L. C. J. *Holt*. That, my Lords, I take to be the meaning, he did not give an actual Stroke, nor hold the Person whilst the other Killed him, nor used any Violence.

Now, I am of Opinion, my Lords, that this is Murder in the Person that did accompany the other in the Design. For he being acquainted with the Design, and knowing of the Intention of the Party to Commit Murder, or do an unlawful Act, upon which Death might ensue, accompanying him in that Design, he shews an Approbation of it, and gives him greater Courage to put it in Execution. Which is an Aiding, Abetting, Assisting and Comforting, which are the Words used in such Indictments, and so my Humble Opinion is, it is Murder in that person that accompanied the other, as well as in him that did the Fact.

L. C. J. *Treby*. My Lords, as this Case is, I think the accompanying of him in that Design (which are the effectual Words upon which the Question turneth) is Murder.

Here is first of all the Party that designeth the Assault, and he doth, pursuant to that Design, make this Assault, and thereupon doth Kill the Third Man, this undoubtedly is Murder in him, for here was Malice prepensed; and intent of Bodily Hurt to the Party, and in pursuance of this Intent, Death ensueth, this is unquestionably Murder in him.

Then the Question is, What Crime it is in him to whom this is made known, and who accompanied the other in that Design, knowing of it. I take this to be a Consent to the Design, and to the Execution of it. It is more than knowing and not revealing of it, tho that was his Duty to have done, (and so the

Council for the noble Lord did admit, that it was a Misdemeanor in him not to hinder such a breach of the Peace.)

But here I say is more than that: He goeth with him to the place, and accompanieth him in order to the executing the Design, and this is an Aiding and Abetting of it. If a man say to another, I intend to assault and beat such a one, come along with me, stand by me, and see it done; and the other consenteth, and accordingly goeth along with him, and accompanieth him whilst he beats and kills the man. This is an Approving, Encouraging, and Emboldening of him in his mischievous Purpose, and shews such concurring malice in that other Person, as renders him guilty of the same Crime with him that with his Hand and Weapon beat and killed the man.

Mr. J. Nevill. My Lords, as this Case is, and as I take the Law to be, this is murder. It is a Case of one's lying in wait, and another Person doth accompany him in the Design, he that did design the lying in wait having told it to him, and then he is present at the Execution. I take it as Law, if the Party is killed, he that is present, and cometh with the other upon that Design, shall be taken to come to assist or abet the other, or defend him if any thing of opposition should happen, and that I take to be Murder.

L. H. S. Are you all of the same Opinion?

Judges. We are of that Opinion, it is Murder in both in that case.

E. of Devon. My Lords.

L. H. Steward. My Lord Steward.

E. of Devon. My Lords, I desire they may all give their Reasons, as well as their Opinions, as this Case is.

Mr. J. Gregory. My Lords, I am humbly of the same Opinion with my Lords Chief-Justices that spoke before me, that this is murder, and my Reason is this: First, He knew of the Design, which was an unlawful Design; then he accompanied him as this Case is put, not only to the Place, but in the Design, which differs the Case from his being present by Accident, for by his going along with him he doth Encourage him to do that, which perhaps singly the other would not venture upon, and going and being present when the Design is executed, upon which the man is slain; I take it he is as much guilty as the Person that strook the Stroke in point of Law.

Mr. J. Eyres. My Lords, I am humbly of the same Opinion, I take it to be murder in him that knew the Design, and did accompany the other in it, though he did nothing at all towards the killing of the man.

For, my Lords, it is the Intention of the Party that diversifieth the Act. If he came there with an ill Intention, and to assist him if need did require, as it is plain he did if he did accompany him in the Design, which is a strong Evidence of the Intention: And my Lords, Nature hath allowed no man a casement into another's Heart, and therefore we can judge of no man's Intention, but by the circumstances of the Fact appearing without; and then, I say, if the Fact be so apparently from the circumstances of it, that he knew of the Design, and accompanied him in it, it is a strong Evidence that he came to assist him; and tho he doth nothing actually in the matter, yet being present to assist him if Occasion did require, it is plain he did aid and abet him in the Action, and so it is as much murder in him, as in the other that gave the Stroke.

Mr. B. Turtton. My Lords, I am humbly of the same Opinion; the thing that differeth this from the former Case, is, That this Person was in the Design with the other, for that, my Lords, I take to be accompanying him in the Design in order to the Execution of it, for bare privity and knowledge of the Design would not do it; but if he be with him at the time, and accompany him in order to the Execution, that maketh him as much Criminal, as he that did actually occasion the Death of the Person, for he was present in the company, and ready to assist him in the Evil Design, which I conceive is as much murder as the other.

Mr. B. Powell. My Lords, I am of Opinion, as this Case is now put, That this is murder in both, and my Reason is this: Where one Person is privy to a design of Felony, or committing some Personal Violence as this Case is, and is not only privy to it, but goeth along with him, and accompanieth him in the pursuing this Design in Execution, tho he may not think it will extend so far as Death, but doth only intend Beating, and hath no Personal Hand, or doth otherwise contribute; but by his being with the other Person when he executeth his Design of Assaulting, and the Party beaten dieth, they are both guilty of murder.

L. Mohun. My Lords, Will your Lordships give leave, that my Council may answer some things that the Judges have said?

L. H. Steward. No, my Lord, you must not Reply after the Judges have given their Opinions. Have any of your Lordships any more Questions to propose?

L. Cornwallis. My Lords, I have one.

L. H. Steward. My Lord Cornwallis.

L. Cornwallis. My Lords, I am very sorry to have occasion to ask any Questions in this Case, but I humbly desire a Question may be answered by the Judges, which is this:

If a Person be by, named William, when Thomas said, He would stab John, upon which William said, He would stand by his Friend, and afterwards Thomas doth actually murder John, and William is present at the same Murder: Whether the Law will make William equally guilty with Thomas, or what Crime William is guilty of?

L. H. Steward. Pray deliver in your Paper, my Lord.

It was delivered in, and Read by the Clerk of the Crown, and Copies given of it as before.

L. H. Steward.

L. H. Steward. What say you to this Question, Gentlemen?

Sir T. Powys. May it please your Lordships, this Question runneth thus :

If a Person be by, named William, when Thomas said, He would stab John; upon which William said, He would stand by his Friend; and afterwards Thomas doth actually murder John, and William is present at the same Murder: Whether the Law will make William equally guilty with Thomas; or what Crime William is guilty of?

My Lords, I do not question but many Cases may be put which will be plainly Murder, and if this Case should be attended with Fact equal to the state of this Case, I believe it will amount to Murder. But upon this difference the Resolution of it will depend; and every Case must stand upon its own Circumstances.

If a Person do generally say, I am fully resolved, I will stab such a man; and say so without condition or limitation, that he will do it; and another doth declare his intention to assist and aid him, by saying, I will stand by you in it, and afterwards the thing is executed in his Presence; who so concurred, I do take it, that that is an Evidence that he is equally guilty with the other.

But on the other hand, if a Man say, I will stab such a one if he oppose me in such a design, and so maketh his resolution conditional, and the person that is present doth say, I will stand by you in it, that is in your doing of it, if you are opposed in such a particular matter; My Lords, with submission, if he is not opposed in that particular thing or design upon which he did say he would stab him, but he doth afterwards, upon some other occasion different from the former, and not relating to what he was talking of before; or upon some other provocation, Stab him, and the other person happeneth only to be present, I take it, that the words which he spoke with a limitation to a particular matter, will not make him liable to the guilt of the Murder that is committed upon quite another account.

The words, *Standing by him*, are capable of two senses; but I would not, in so serious a matter as this, offer to put a Jocular sence upon them, as if it was meant he would stand by and not meddle; but I take it, that such a Case as this will turn upon the manner of the Man's engaging himself; if he engaged to stand by him in a particular matter, and the other doth stab the threatened person afterwards, not upon that particular occasion, but upon another account, and he happeneth only to be by, those words will not draw him in, though they should be well proved to be spoken so as to involve him in the guilt of that Murder.

For the Law is favourable to a Man in the Case of Life, and will Judge according to the intention of the party; and he having not abetted or contributed to the Fact, his words shall not be carried to his prejudice, further than his intention, or farther than the concomitant circumstances of the matter will make them plainly import.

This Case, is put generally, and without restraint; and there is no question but many Cases may be put that will undoubtedly be Murder; but every Case must, as I said, stand and fall by its own Circumstances.

Mr. Hawles. My Lords, I think the Case as it is put single, and upon these Circumstances, would be Murder; and my reason is this, The person that saith he will stand by a Man, who saith he will kill or stab another, is as much guilty as that Man himself, and will be thought as malicious; but if it should happen that between the words pronounced, and the Murder committed, that the person that saith he will stand by his Friend, cometh to have a friendship and kindness for the party that is threatened to be killed; and upon meeting him caresses him extremely, and there be no Malice continuing (as there must be to the time of the stroke given, to make Murder) but he happeneth to be killed by that other, suddenly in his presence, those words will not make him guilty of Murder; but as the Case is put, I think it is Murder.

Mr. Price. My Lords, I shall not take upon me to trouble your Lordships with making a Case, but as this Case is put without any Condition, or other Circumstance annexed to it, I think it will be Murder.

L. H. Steward. There will be no need to ask the Kings Council upon this Question whether they will speak to it, because the Counsel for the Prisoner agree it to be Murder; Therefore if your Lordships please, we may now proceed to ask the Judges Opinions; And first, What say you my Lord Chief Justice.

L. C. J. Holt. My Lords, the Question is this.

If a Person be by, named William, when Thomas said he would stab John, upon which William said he would stand by his Friend, and afterwards Thomas doth actually Murder John, and William is present at the same Murder, Whether the Law will make William Guilty with Thomas; or what Crime William is Guilty of?

My Lords, I am of opinion that this is a great evidence of Murder in William that was thus actually by. I cannot say it is Murder, as the Case is put; but upon such an Evidence, Fact is to be left to the Conscience of a Jury in the Case of a Commoner, or the Conscience of the Peers in the Case of a Peer.

For when William said he would stand by his Friend who said he would Stab John, That is plainly a Consent, or at least such an expression, from which, a Consent to the Stabbing of him may be inferred.

Thus

Then afterwards it seemeth *Thomas* actually Murdereth *John*, and *William* was present. Now if *William* was designedly present with the other that committed the Murder, then it is plain it will be Murder in *William*, but if there be no Evidence to prove upon what account he was present, it may be presumed he was present in pursuance of his former Agreement, so that it may be Murder or not Murder, as Circumstances may happen upon the Evidence, if he was present in pursuance of his promise, then no doubt it is Murder; But if he did not meet in pursuance of that Agreement, it may not be Murder. But this is all matter of Evidence, and that rests upon the Consciences of those that are to Try the Prisoner.

L. C. J. Treby. My Lords, I am of Opinion that this is Evidence, and great Evidence of Murder, the Fact consisteth of Two Parts.

First, Here was a deliberate Expression of his Intention, that he would stand by his Friend *Thomas*, when his Friend *Thomas* had said before he would Stab *John*, and this I take properly to be Interpreted, and understood as a promise of Abetting him in the Murder he would commit; for, I presume, standing by him in this Case to be meant in a grave Sense, signifying that he would Befriend, and if there should be occasions, Defend and Support *Thomas* in what he resolv'd to do.

Secondly, He was present at the Stabbing, which was before Designed and Spoken of: Now I think, his being present when that Resolution of his Friend was executed, coupled with his preceeding Declaration of his Intention, is a strong Evidence of Murder.

Mr. J. Newill. My Lords, the Question I take to be, Whether the Law of England saith *William* is Guilty of this Murder? Truly, my Lords, I must say as my Lords have said before, that as this Case is, This is a very strong Evidence of Murder: For when he doth say, That he will Murder such a Man, and the other saith, he will Stand by him, in the common acceptation of those Words, it is taken, that he doth then agree with him in that Design, which he declareth to be to Stab *John*.

But then it seemeth to me truly, that this Case is not put full, how long it was afterwards that the Fact was done, and what Circumstances attended it; for if any Circumstance happened afterwards that did amount to a Countermand of this promise, or any thing interposed to interrupt it, that this Agreement was not performed, perhaps the Case might not be Murder, but still it is Evidence, so far as your Lordships may Judge upon the Circumstances that attend it, whether it be Murder or no. But to declare a further Opinion, as this Case is put, truly I cannot.

Mr. J. Gregory. My Lords, I do upon this Case humbly conceive there is a little difference from the former, only there it is put positively, but here as Evidence. Now, my Lords, I do humbly conceive, that in common Discourse, I will stand by my Friend, is, I will assist my Friend. If my Friend should say, I will Kill such a Man, or I will do any other act, and I say I will stand by him, I think the import of the Words is, I will assist him in it.

My Lords, As to the latter part, as this Case is put, for I can go no further, it doth not appear, whether when the Man was killed, he came by accident, or in pursuance of his Agreement, knowing of the Design. Now that is but matter of Evidence, if he came by Accident it will not be Murder, but if he came with Design, no doubt it is Murder in one as well as in the other.

E. of Mulgrave. My Lords.

L. H. Steward. My Lord of Mulgrave.

E. of Mulgrave. If any of my Lords desire that the rest of the Judges should give their Opinion it is fit they should be heard, but if no Lord doth desire it, and they say they are of the same Opinion without any more to do, because it may save a great deal of time; I desire your Grace may only ask them, Whether they agree in their Opinions with those that went before?

L. Cornwallis. My Lords, I humbly desire the Judges may all Speak.

Lords. Go on then.

Mr. J. Eyres. My Lords, I humbly conceive this is a Question of Fact, and not of Law, and it is a very strong Evidence, if a Man hear another say he will Stab such a Man, and he saith he will stand by his Friend, and accompanieth him at the time when the Fact is done, it is a strong Evidence, that he came with a Murderous intent with his Friend; and doth as much manifest his intention to commit Murder, as if he had actually given the Wound, and a great Evidence to involve him in the Crime, as much as the Person that gave the Stroke.

Mr. B. Tinson. My Lords, I am of the same Opinion with my Lords and my Brothers that have spoke before me; my Lords, I confess I do not think it cometh up so close to the matter as the Question that was put last before; for this, as my Brother *Eyres* saith, is rather a Question of Fact and Evidence, than Law. But certainly a very strong Evidence it is of the Intention of that Party that was present when the other said he would Stab the third Person, and his going away presently, and accompanying him when the Stab was given, and Murder done, I say his presence after this Determination is a very great Evidence, that it was done in pursuance of that Agreement: It is a matter of Fact which your Lordships will determine, according as the Circumstances appear before you, which may vary the Resolution one way or other.

Mr. B. Powell. My Lords, I am of Opinion as this Case is put, that it may be Murder or not Murder, according to the Concomitant Circumstances. If a Man say I will Stab such a one, and another say he will stand by him, and afterwards when he is with his Friend, the Man is Stabbed, if that is at some distance of time from the Words Speaking, and the meeting be Accidental, or other Facts happen that may alter the Case, it may receive another Determination. But if after this is said there be any immediate going to look after this Man, or they be near the way where this Man is to come, and then he is killed; this is a mighty strong Evidence that something was done in pursuance of this Resolution, and that the one went along with the other to Countenance him in the Action.

L. H. Steward. Have any of my Lords any other Questions to propose?

Lords. No.

E. of Mulgrave.

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E. of Mulgrave. My Lords, If there had been any other Questions proposed by any other Lords, I would have staid till they had all been over; but I see their Lordships are at an end with their Questions: I have one which I think is nearer the Case than any has been yet, and of more Importance to the Matter in Hand, and more fit for the Counsel to inform you in, and for your Lordships to ask, and the Judges to answer. The Question is this:

If A. accompanieth B. in an unlawful Action, in which C. is not concerned, and C. happen to come in the way of B. after the first Action is fully over, and happeneth to be killed by B. without the assistance of A. Whether A. is Guilty of that Mans Murder?

This Question was handed to the Table, read by the Clerk, and Copies given as before.

L. H. Steward. What say you to it, Gentlemen, who are of Council for the Prisoner?

Sir T. Powys. May it please your Lordships, I will not trouble your Lordships with the repeating of the Case again, because my Copy is agreeable with what was read at the Table: Nor shall I trouble your Lordships with many Words upon this Case, because I take it the Law is very plain.

If two Persons accompany each other to do an unlawful Act, and in the Execution of that unlawful Act, one of them doth go beyond what was at first designed, and a third Man is killed whilst they are in Execution of that Act, though the one did the Act, and the other did not immediately contribute thereto, yet he being joyned with him in the unlawful Action, upon which this doth ensue, he is answerable for all the ill Consequences of it; the Law herein is clear according to the Case that was put at first of two Persons going together to rob a Park and steal Deer.

But if that unlawful Action be executed, or the two Persons who joyned in the Design have totally desisted from it, or are disappointed in it, if afterwards when they are together upon some other Occasion, it happeneth that one of them killeth another Man, but his Friend no way aided him or assisted him in the doing of it, your Lordships and the Law will separate these Persons who were at first joyned together for another purpose; and will distinguish between them in this new Matter that is subsequent to the former Agreement, though they were in Company together.

Because in the first Case, he that joyned in an ill Action must look to himself, and be answerable for all that followeth thereon: In the second Case, he is in no fault at all, it is only his Misfortune to be in ill Company if he had no Hand in the Fact. This the Law is very plain in; and therefore I shall not trouble your Lordships further with speaking to it.

Mr. Hawles. My Lords, I would only add one short Word; There is but this one difference between an Accessory and a Principal; The Principal is always present, the Accessory is always absent. And I would only put you one Case of an Accessory in Felony out of my Lord Coke; he saith, It must be the same Numerical thing in which they are joyned, and therefore if *A.* bid *B.* Rob the Vintner's Boy of Plate as he cometh to a Gentleman's Chamber to bring Wine, but *B.* doth not pursue the Instructions, but breaketh into the Vintner's House, and stealth the Plate there; this is a different matter, it is not the same thing wherein *A.* and *B.* agreed at first, and *A.* is no way concerned in it.

The same Law is, if *A.* and *B.* agree to kill *C.*, and *B.* killeth *D.*, tho *A.* be present, it will not be Murder in *A.*; for the Agreement was for the Killing of *C.*, and not of *D.*

My Lords, as this Case is put, they did agree in the unlawful Act; but that Matter was over, and there is no Agreement as to the other Matter, nor is that pursuant to the Matter agreed upon; and therefore the presence of the party that agreed to the unlawful Act doth not make him Guilty of Murder, unless he agree to that too.

Mr. Price. My Lords, I have but one Word on the same side, I take it, that when a Man is doing an unlawful Act, there is an inseparable Incident that doth attend it, which is Malice implied. And this is so inseparable, that when his ill Design is at an end, his Malice is at an End too, and hath no being, and therefore if he entereth upon an ill Design afterwards, tho another be present that was joined with him in the ill former Design, yet his Malice who was so joined, being coupled with the ill Design that is over must be gone too. And there is no Malice in his being barely present. And therefore for that Reason, he that was Aiding and Assisting before, cannot be Principal in such a sudden Act as this new one is, and consequently cannot be Guilty of Murder, or of Manslaughter.

L. H. Steward. M. Attorney, do you, or any of the King's Counsel think fit to say anything to this Question?

Mr. Att. Gen. My Lords, we that are of the King's Counsel do not think we have any occasion to be heard to this Question.

L. H. Steward. Then my Lords the Judges, what say you to it?

L. C. J. Holt. If your Lordships please, I will again repeat the Question, it is this:

If A Accompanieth B in an unlawful Action, in which C. is not concerned, and C happeneth to come in the way of B, after the first Action (that is the unlawful Action, I suppose) is fully over, and happeneth to be Killed by B, without the Assistance of A, Whether A is Guilty of that Man's Murder?

And I do humbly conceive with great clearness, That *A.* is not guilty at all. For here is no Relation to the first unlawful Act that he was engaged in, but that is all over and determined; and then *C.* cometh in the presence of *D.* who killeth him, and of *A.* who had no knowledge of any Malice between them, or any Design of his Death. This is merely accidental, and doth not depend upon the first unlawful Action; and therefore *A.* is not Guilty.

L. C. J. Treby. My Lords, I think there can be difference of Opinions in this Case: For it is plain there was an unlawful Action in which they did agree, (as a Riot or Assault to beat or wound a Man, or the like) and if Death had ensued, they both had been guilty of Murder, as well he that looked on, as he that gave the Mortal Wound. But then the Question adderth further, That the Action to which they agreed was fully over, and there only happeneth to be a continuance of their presence together; and there being an old Grudge between one of the Parties and a third Man, and the Party who had that old Grudge, meeting with his Enemy, executeth it then upon him, and murdereth him; this doth in no sort affect the other that was present, and had joyned in the former unlawful Action that was over. In the former, he did joyn and concur, and therefore if Death had ensued, they had been both guilty: In the latter, he did not joyn and concur; and therefore though Murder did happen in his Presence and Company, he is not guilty, but only the Party that actually killed is.

Mr. J. Nevill. My Lords, I am of the same Opinion.

L. H. Steward. If you are all of the same Opinion, I think you need say no more.

Judges. We are all of the same Opinion, my Lords.

L. H. Steward. My Lords, all the Judges are of the same Opinion; and now I think it is your Lordships Resolution to Adjourn to the House.

Lords. Ay, Ay.

L. H. Steward. This Court is Adjourned to the House of Lords.

And then the Lords returned to their House in the same Order, and there presently Adjourned till the next Morning.

Die Sabbati Quarto Februarii 1692.

A Bout Four of the Clock in the Afternoon, the Lords came from their House in the former Order into the Court in *Westminster-Hall*; and being seated on their Benches, and his Grace the Lord High Steward in the Chair before the Throne, Proclamation was made for Silence; and the Judgment of the Peers was demanded, and delivered in this manner.

L. H. Steward. My Lords, Your Lordships have now heard all the Evidence both against the Prisoner and for him: The next thing is your Lordships Judgment, and for that the Method is this, Your Lordships Opinions are to be delivered in the absence of the Prisoner. The Question that your Lordships are to deliver your Opinion about will be this:

Whether my Lord Mohun be Guilty of the Murder of William Mountford, whereof he stands Indicted, or Not Guilty?

The Order of delivering your Opinions must be, to begin with the youngest Baron, and so upwards; and therefore I must desire your Lordships to allow me time to take your Judgments distinctly, and that I may write them down.

Lords. Ay, Ay.

L. H. Steward. My Lord *Lemster*, Is my Lord *Mohun* Guilty of the Murder whereof he standeth Indicted, or Not Guilty?

The Lord *Lemster* stood up in his Place Uncovered, and laying his Right Hand on his Breast, pronounced his Judgment, thus:

L. Lemster. Not Guilty upon my Honor.

The same Question was severally asked of all the Lords, who in the same Form delivered their Opinions, as followeth:

L. Capell. Guilty upon my Honor.

L. Ashburnham. Not Guilty upon my Honor.

L. Cholmondeley. Not Guilty upon my Honor.

L. Godolphin. Not Guilty upon my Honor.

L. Osborne. Not Guilty upon my Honor.

L. Arundel of Trerise. Not Guilty upon my Honor.

L. Crew. Not Guilty upon my Honor.

L. Cornwallis. Not Guilty upon my Honor.

L. Granville. Not Guilty upon my Honor.

L. Barkley of Straston. Not Guilty upon my Honor.

L. Lexington. Not

L. Lexington. Not Guilty upon my Honor.
L. Lucas. Not Guilty upon my Honor.
L. Clifford of Lansborough. Guilty upon my Honor.
L. Colpeper. Guilty upon my Honor.
L. Vaughan. Not Guilty upon my Honor.
L. Fermyn. Not Guilty upon my Honor.
L. Leigh. Not Guilty upon my Honor.
L. Lovelace. Not Guilty upon my Honor.
L. Brooke. Not Guilty upon my Honor.
L. Hunsdon. Not Guilty upon my Honor.
L. Chandon. Not Guilty upon my Honor.
L. Willoughby of Parham. Not Guilty upon my Honor.
Lord Evers. Not Guilty upon my Honor.
L. Fitzwalter. Not Guilty upon my Honor.
L. Morley. Not Guilty upon my Honor.
L. Berkeley of Berkeley. Not Guilty upon my Honor.
L. De-la-Ware. Not Guilty upon my Honor.
L. Willoughby of Eresby. Not Guilty upon my Honor.

L. H. Steward. My Lord-Viscount Villiers, &c.

Visc. Villiers. Not Guilty upon my Honor.
Visc. Longueville. Not Guilty upon my Honor.
Visc. Wymouth. Guilty upon my Honor.
Visc. Newport. Not Guilty upon my Honor.

L. H. Steward. Earl of Warrington, &c.

E. of Warrington. Guilty upon my Honor.
E. of Scarborough. Not Guilty upon my Honor.
E. of Marleborough. Not Guilty upon my Honor.
E. of Montague. Not Guilty upon my Honor.
E. of Monmouth. Guilty upon my Honor.
E. of Falconberg. Not Guilty upon my Honor.
E. of Portland. Guilty upon my Honor.
E. of Abington. Not Guilty upon my Honor.
E. of Rochester. Guilty upon my Honor.
E. of Nottingham. Guilty upon my Honor.
E. of Radnor. Not Guilty upon my Honor.
E. of Macclesfield. Not Guilty upon my Honor.
E. of Feversham. Not Guilty upon my Honor.
E. of Craven. Not Guilty upon my Honor.
E. of Carlisle. Not Guilty upon my Honor.
E. of Bath. Not Guilty upon my Honor.
E. of Essex. Not Guilty upon my Honor.
E. of Sandwich. Guilty upon my Honor.
E. of Scarsdale. Not Guilty upon my Honor.
E. of Sunderland. Not Guilty upon my Honor.
E. of Thanet. Not Guilty upon my Honor.
E. of Chesterfield. Not Guilty upon my Honor.
E. of Carnarvan. Not Guilty upon my Honor.
E. of Kingston. Guilty upon my Honor.
E. of Stamford. Not Guilty upon my Honor.
E. Rivers. Not Guilty upon my Honor.
E. of Mulgrave. Not Guilty upon my Honor.
E. of Manchester. Not Guilty upon my Honor.
E. of Westmoreland. Guilty upon my Honor.
E. of Bullingbrook. Not Guilty upon my Honor.
E. of Clare. Not Guilty upon my Honor.
E. of Denbigh. Not Guilty upon my Honor.
E. of Northampton. Not Guilty upon my Honor.
E. of Bridgewater. Guilty upon my Honor.
E. of Bedford. Not Guilty upon my Honor.
E. of Huntingdon. Not Guilty upon my Honor.
E. of Kent. Not Guilty upon my Honor.
E. of Shrewsbury. Not Guilty upon my Honor.
E. of Oxford. Guilty upon my Honor.

L. H. Steward. My Lord Chamberlain, &c.

E. of Dorset. Not Guilty upon my Honor.

L. H. Steward.

L. H. Steward. My Lord Steward, &c.

E. of Devon. Not Guilty upon my Honor.

L. H. Steward. My Lord Great Chamberlain, &c.

E. of Lindsey. Not Guilty upon my Honor.

L. H. Steward. My Lord Marquis of Halifax, &c.

L. Mar. of Halifax. Not Guilty upon my Honor.

L. H. Steward. My Lord Duke of St. Albans, &c.

D. of St. Albans. Not Guilty upon my Honor.

D. of Northumberland. Not Guilty upon my Honor.

D. of Ormonde. Not Guilty upon my Honor.

D. of Somerset. Not Guilty upon my Honor.

D. of Norfolk. Not Guilty upon my Honor.

L. H. Steward. My Lord Privy Seal, &c.

E. of Pembroke. Not Guilty upon my Honor.

Then his Grace the Lord High Steward stood up uncovered, and laying his Right Hand upon his Breast, pronounced his Grace's own Judgment thus:

L. H. Steward. My Opinion is, That my Lord *Mohun* is Not Guilty, upon my Honor.

Then his Grace seated himself again in the Chair, and numbred up the Opinions of the Peers.

L. H. Steward. My Lords, I have carefully taken all your Lordships Opinions, and find the Numbers to be thus: My Lords that have found my Lord *Mohun* to be Guilty are Fourteen; my Lords that have found him Not Guilty are Sixty nine. Call for the Prisoner.

Proclamation was made for the Chief Governor of the *Tower* to bring forth the Body of the Prisoner, and he was brought to the Barr as before: And Proclamation for Silence was made.

L. H. Steward. My Lord *Mohun*, you have been Indicted for the Murder of *William Mouniford*; upon your Arraignment you have Pleaded Not Guilty, and have put your self upon the Judgment of your Peers; And your Peers have considered what hath been said both for and against you, and the Judgment of my Lords is this, That your Lordship is Not Guilty: Your Lordship is therefore discharged. Make Proclamation for Dissolving the Commission.

Cl. of Crown. Serjeant at Arms make Proclamation.

Serjeant. O Yes.

Cl. of Cr. Again.

Serjeant. O Yes.

Cl. of Cr. Again.

Serjeant. O Yes.

Cl. of Cr. My Lord High Steward of *England*, his Grace doth straightly Charge, and Command all manner of persons who have given their attendance here, to depart hence in the Peace of God, and of our Sovereign Lord and Lady the King and Queen's; for his Grace the Lord High Steward of *England* intendeth to Dissolve his Commission.

Which the Serjeant at Arms repeated, and at the end of it, his Grace standing up, and holding the White Staff in both his Hands, broke it in two, by which his Commission was dissolved.

Marq. of Carmarthen. Is it your Lordships pleasure to adjourn to your own House?

Lords. Ay, Ay.

Marq. of Carmarthen. This House is Adjourned into the House of Lords.

And then the Peers returned to their own House in the same Order.

F I N I S

The Reader is desired to Correct the following Errors of the Press.

Page 9. Line 24. read the Kings Council, Page 11. Line 46. read Reply of; and Line 57. read misford for misting.

Chas. in paging, 29-32; matter complete

